

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Developing a Unified Intercarrier)	CC Docket No. 01-92
Compensation Regime)	
)	

**REPLY COMMENTS
of
THE RURAL ALLIANCE**

Filed: February 1, 2007

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I. INTRODUCTION

The Rural Alliance¹ files these reply comments in response to comments filed separately on October 25, 2006, by more than 100 parties. In this proceeding, the Commission seeks comment on the Missoula Plan (Plan), a comprehensive strategy for effective intercarrier compensation reform. The Plan was developed through a rigorous collaborative effort overseen by the National Association of Regulatory Utility Commissioners (NARUC).² The Rural Alliance participated actively in that process, and was one of the original parties that sponsored the Plan.³ The Rural Alliance did not file initial comments in this proceeding, but rather participated as a signatory to the comments filed jointly by the “Supporters of the Missoula Plan.” Although the Rural Alliance is also a concurrent signatory to reply comments filed by the Supporters of the Missoula Plan, the Rural Alliance files these separate comments to address specifically issues that are critical to rural consumers and the rural telephone companies that serve them.

Forty-one parties representing rural telephone companies or rural telephone company interests filed initial comments in this proceeding, and nearly all supported the framework of the Plan; and one filing by the “Rural ILECs” was signed by 588 individual companies. Rural carriers support the Plan because it represents the best settlement negotiated by a diverse group

¹ The Rural Alliance is a group sponsored by over 300 rural telephone companies organized to advocate for effective intercarrier compensation reform that will benefit rural consumers and the companies that serve them.

² The Missoula Plan for comprehensive intercarrier compensation reform was filed with the Commission on July 24, 2006, by the National Association of Regulatory Utility Commissioners (NARUC). *See* Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications; Ray Baum, Commissioner and Chair, NARUC Task Force on Intercarrier Compensation; and Larry Landis, Commissioner and Chair, NARUC Task Force on Intercarrier Compensation, to Kevin Martin, Chairman, Federal Communications Commission, CC Docket Nos. 01-92, *et. al*

³ *See* letter to Hon. Ray Baum, Chairman of the NARUC Intercarrier Compensation Task Force dated July 18, 2006. Other original sponsors of the Missoula Plan include AT&T, BellSouth Corp. Cingular Wireless, Commonwealth Tel. Co., Consolidated Communications, Epic Touch, Global Crossing, Iowa Telecom, Level 3 Communications, and Madison River Communications.

of parties, and presents a viable solution to numerous intercarrier compensation issues that are critically important to rural carriers. As NTCA characterized best:

The Missoula Plan is a remarkable proposal forged through numerous negotiating sessions over several years among parties with a long adversarial history. It is the only industry negotiated intercarrier compensation proposal submitted in this proceeding that attempts to reconcile the differing interests of companies from many segments of the communications industry. These companies recognized that it is far more important to produce a plan that all could accept than to continue to fight for a plan that was ‘perfect in their own eyes.’ . . . The Missoula Plan represents a significant step towards reforming intercarrier compensation and warrants thoughtful and thorough consideration by the Commission.⁴

The Rural Alliance urges the Commission to act quickly to implement the Plan in its entirety. Rural carriers rely on the revenues provided by intercarrier compensation to fulfill their mission of providing high-quality basic and advanced services in high-cost areas of the Nation. The Plan is a comprehensive and fair solution to a multitude of issues that have created numerous disputes among carriers, created uncertainty regarding cost recovery, and diverted the energy of regulators and industry away from what should be their primary mission – serving consumers. The remedy and certainty that will result from implementing the Missoula Plan will provide rural carriers with both the ability and incentive to continue investments in rural telecommunications infrastructure that in turn will provide wider availability of broadband services to rural consumers.

A. THE MISSOULA PLAN WILL BENEFIT RURAL CONSUMERS AS WELL AS ALL CONSUMERS NATIONWIDE.

Rural carriers face unique challenges serving rural and high-cost regions of the Nation. Rural carriers exist because, at some point in the past, larger carriers chose not to serve those rural areas – precisely because they are costly to serve. In fact, some large carriers that hold rural properties have ceased investing in those areas, have recently sold those properties, or are

⁴ Comments of NTCA at 1.

currently endeavoring to divest themselves of those respective rural properties because of the associated high costs. Consistent with the mandate of the Communications Act of 1934, as amended (the Act), rural consumers deserve affordable, high-quality telecommunications services, comparable to those available in urban areas.

Rural carriers currently recover the costs of providing these services through revenues from three sources: (1) end users, (2) other carriers that use their networks (*i.e.*, intercarrier compensation), and (3) the Universal Service Fund (USF). For many rural carriers, intercarrier compensation represents one-third or more of the total cash flow necessary to cover the cost of providing service. Balanced cost recovery among these three sources allows rural consumers to have end-user rates that are reasonably comparable to those charged in more urban areas of the Nation, as required by the Act,⁵ and maintains universal service funding at reasonable and sustainable levels.

The current disparate intercarrier compensation regimes cause arbitrage and phantom traffic, each of which deprives rural local exchange carriers (RLECs) of appropriate payments for the use of their networks. In most areas of the country, the single most critical pricing issue facing RLECs is the fact that intrastate access charges average 5.1 cents per minute, while interstate access charges average only 1.8 cents per minute. This disparity leads not only to arbitrage and phantom traffic, but also results in a lack of rural consumer access to bundled service offerings and calling plans that are commonly available to consumers in urban parts of the Nation where access rates are lower. One of the most important benefits of the Plan is the Restructure Mechanism (RM), which allows RLECs to unify their access charges at interstate levels while maintaining recovery for the costs of providing the rural network that not only provides service to rural consumers at affordable rates, but which also is used by other carriers

⁵ 47 USC 254(b)(3).

providing other or competing services.⁶ Current uncertainty regarding intercarrier compensation reform, as well as uncertainty regarding the USF, is having a chilling impact on carriers' abilities and incentives to make needed investment in rural telecommunications infrastructure. The Plan provides solutions and certainty that will facilitate rural infrastructure investment, thereby providing benefits to both rural and urban consumers.

Consumers in all regions of the Nation, including "low-cost" states and urban areas, benefit from RLEC investments in rural telecommunications infrastructure. Rural consumers benefit from access to broadband service and a broad range of communications, information, and educational resources enabled by modern telecommunications capabilities. These capabilities enable rural communities to attract high-tech businesses and offer their young people opportunities to find high-paying and rewarding jobs within their communities. Urban consumers benefit from the interconnected network and the ability to reach rural consumers, as well as the agricultural, energy and entertainment resources that are located in rural areas of America. All consumers and all carriers throughout the Nation benefit from connectivity with LEC networks; indeed, that is the most basic premise of the universal service policy.

The Plan is a negotiated agreement that achieves, through consensus and compromise, many needed reforms that will benefit consumers. Among the important benefits of the Plan are:

- It preserves the balance among the three sources of revenue that will allow universal service goals to continue to be met;
- It assures revenue continuity to support rural infrastructure investment;
- It unifies state and interstate access levels, thereby removing the incentives for arbitrage and phantom traffic;
- It resolves the source of many current disputes regarding interconnection and intercarrier compensation; and

⁶ For example, the wireline network provided by rural carriers often is used to connect wireless towers to the wireless network; VoIP providers also often rely on the networks of rural carriers to reach their customers.

- It allows for the evolution to broadband and IP-based networks and services for rural consumers.

In these Reply Comments, the Rural Alliance addresses and refutes a number of the criticisms raised in initial comments, explaining why the provisions of the Plan are in the public interest and should be adopted by the Commission.

II. THE MISSOULA PLAN'S INTERCARRIER RATES FOR RURAL RATE OF RETURN CARRIERS ARE GROUNDED IN REASONABLE PUBLIC POLICY AND SOUND ECONOMIC PRINCIPLES.

A. THE PLAN'S UNIFICATION OF EACH RATE-OF-RETURN CARRIER'S ACCESS RATES AND STRUCTURE, AND THE CAPPING OF NON-ACCESS RATES AT INTERSTATE ACCESS LEVELS, WILL ACHIEVE SIGNIFICANT BENEFITS FOR USERS OF THOSE SERVICES IN A RATIONAL MANNER CONSISTENT WITH SOUND ECONOMICS AND PUBLIC POLICY.

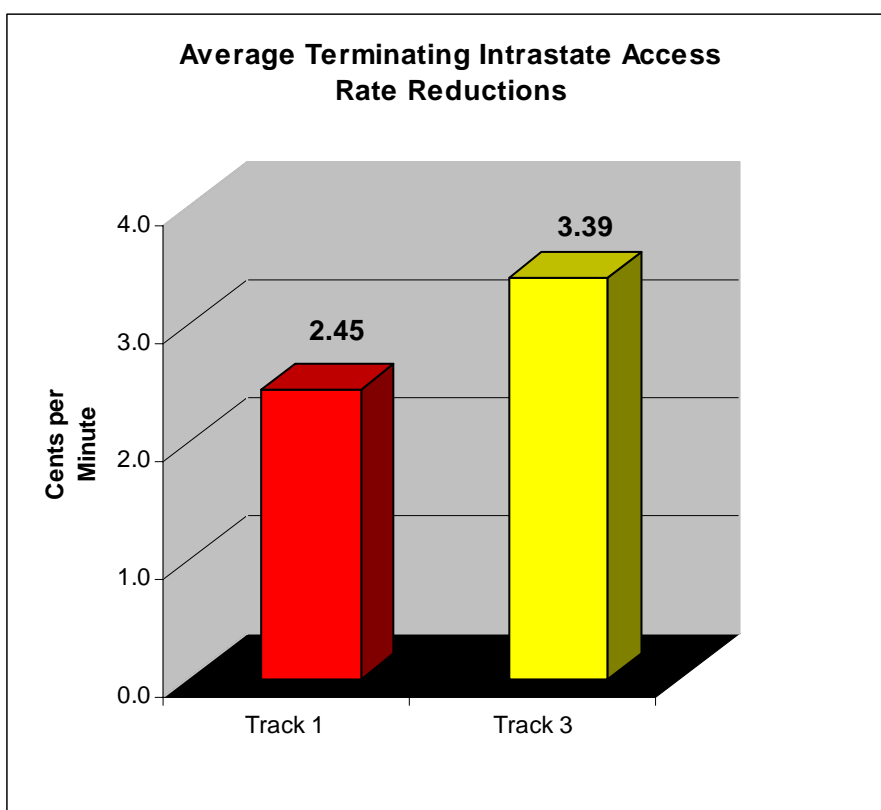
The Plan calls for unification of access rates for Track 3 rate of return carriers, and the capping of non-access rates at interstate levels. This will reap significant benefits for end-users in an economically sound manner.

The Plan proposes to transition each rate of return (RoR) carrier's access rates and structure to interstate levels, while non-access rates (reciprocal compensation) for those carriers will be capped at interstate access levels and subject to the existing negotiation and arbitration rights available under Federal law.⁷ This will achieve significant benefits for users of those services in a rational manner consistent with sound economics and public policy. Some parties, however, assert that the resulting rates for Track 3 carriers still are too high and will provide Track 3 companies with a competitive advantage. Some parties also assert that by maintaining different rates for carriers between tracks and different rates among carriers in Track 3, the Plan will result in a continuation -- or even a worsening -- of rate arbitrage. The Rural Alliance disagrees with these contentions, which fail to recognize intercarrier compensation-related costs in the most-rural areas of the Nation, ignore rational economic conclusions already reached by the Commission, and appear to mask intentionally the true causes and effects of arbitrage.

⁷ See Missoula Plan, filed July 18, 2006, at 17-19.

1. Track 3 Carriers Will Implement the Deepest Rate Reductions of All Carriers.

Some parties argue that the Track 3 carrier rate reductions proposed in the Plan are inadequate.⁸ These criticisms are not only predictable, given history, but wrong. In fact, the Track 3 carriers' *average* decrease in intrastate access rates is considerably greater than Track 1 carriers' *average* decrease.⁹ The chart below depicts the *average* terminating intrastate access rate decrease for Tracks 1 and 3.¹⁰



⁸See Comments of ALLTEL and SunCom Wireless at 8; Core Communications at 7; Verizon at 7.

⁹See The Missoula Plan Inter-carrier Compensation Reform NARUC Webinar, September 14, 2006, 9-10.

¹⁰ The Average Terminating Intrastate Access Rate Reductions was calculated as follows: Track 1 Carriers' Step 4 Missoula Plan Terminating Inter-carrier Compensation Rate minus Large ILEC Carriers pre-Missoula Average Intrastate Access Rates (0.05 cents/minute - 2.5 cents = -2.45 cents/minute reduction); Track 3 Carriers' Step 4 Missoula Plan Terminating Inter-carrier Compensation Rate minus Small ILEC Carriers' pre-Missoula Average Interstate Access Rates (1.71 cents/minute - 5.1 cents/minute = -3.39 cents/minute reduction). See *The Missoula Plan Supporters Ex Parte Notice*, CC Docket No. 01-92 (filed Aug. 22, 2006).

Although the Track 3 carriers' intrastate rates *on average* will be reduced by 3.4 cents per minute, intrastate rates of many of those companies will drop by more than that amount, and for many companies *significantly more*. Due to the nature and characteristics of the territories they serve, many rural companies have switching, transport, and transmission costs that are significantly higher than not only companies in non-rural areas, but also other rural companies.¹¹ In addition, many companies operate in states that did not reduce intrastate access charges while interstate access charges were being reduced by the FCC. In those states, rural companies in highest-cost areas might have intrastate access rates that are significantly above the National average for Track 3 carriers. Under the Plan, it is these companies that would be making the largest reductions of any industry segment by bringing those intrastate rates down to interstate levels. These reductions are much larger than the average Track 3 reduction depicted above. Therefore, it is simply wrong for some parties to claim that carriers operating in the Nation's most-rural areas are not pulling their weight in the rate reductions that are proposed in the Plan.

2. Missoula Plan Access Rates For Track 3 Carriers Are Cost-Based in Accordance With FCC Rules, Sending Proper Economic Signals to Users of Rural Networks and Also Restraining Impacts on Other Cost-Recovery Mechanisms.

In establishing unified access rates for Track 3 carriers, the Plan would build upon the years of work that the Commission has undertaken in its interstate access reform orders, the most recent of those being the Multi-Association Group Plan Order.¹² Despite the magnitude of rate reductions that RoR carriers would implement, some parties refuse to recognize that the ultimate

¹¹ Some state commissions recognize appropriately the cost differences in areas of the country served by Track 3 rate of return carriers. *See*, for example, Comments of New York State Department of Public Service at 4, and Public Utilities Commission of Ohio at 26.

¹² *See, generally, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166 ("MAG Order").*

rates meet the Commission's long-standing cost-based standard for RoR carriers. This mission is accomplished by transitioning all access rates to interstate levels and by capping reciprocal compensation rates at those levels while utilizing existing Total Element Long Run Incremental Cost (TELRIC) methodology for setting such rates.¹³ Despite this approach, dissenting parties propose that the interstate levels and structures at which Track 3 carrier access rates would be set are not cost-based and lack supporting data, despite facts and findings indicating otherwise. ALLTEL and SunCom Wireless claim that Track 3 rates are "far above economic cost,"¹⁴ Dobson Cellular and American Cellular attack the rates of all tracks, saying "there is no attempt to even pretend that the charges here are cost-based."¹⁵ The Commission, however, has already established through the application of Parts 36 and 69 of the Commission's rules that RoR carriers' interstate rates are cost-based.

In the *MAG Order* and other prior proceedings, the Commission concluded that rural carriers may establish for interstate access services rates that recover those carriers' costs.¹⁶ In addressing access rates for Track 3 carriers, the Plan follows precisely that unequivocal Commission conclusion. The interstate rates and structure to be implemented for Track 3 access services will result in cost-based rates *as this term is defined by Commission orders and rules*. Moreover, this will also achieve another goal of Commission intercarrier compensation reform:

¹³The Commission has expressed its intention that rural rate of return carriers should be permitted to establish rates for their interstate access services that recover costs (*See MAG Order* at paras. 12, 84 and 206).

¹⁴*See* ALLTEL and SunCom Wireless Comments at 13.

¹⁵*See* Comments of Dobson Cellular and American Cellular at 4.

¹⁶*See MAG Order. See, also, Federal-State Joint Board on Universal Service*, CC Docket 96-45; *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate of Return Regulation*, CC Docket 98-77; and *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket 98-166.

the promotion of economic efficiency.¹⁷ Yet, despite this clear connection, some parties claim that the Track 2 and 3 rates result in an “arbitrary bias” in favor of rural carriers.¹⁸ Such a claim is wholly incorrect in light of the fact that Track 3 rate levels are based upon costs as determined by the Commission’s Part 36 and 69 Rules.

Finally, by maintaining cost-based rates in Track 3 areas, the Plan minimizes the impact on the size of the RM. In the initial Plan filing, the Plan sponsors estimated the size of the RM to be approximately \$1.5 billion.¹⁹ Although these estimates did not “break down” impacts by track, it is apparent that any reduction of Track 3 intrastate access rates below cost-based interstate levels will put more pressure on the RM. This would have the unwanted effect of inflating collection mechanisms that affect all customers, rather than only the customers who utilize access services.

3. The Missoula Plan Will Reduce Arbitrage Significantly -- Arguments to the Contrary are Disingenuous.

Minimizing arbitrage opportunities is one of the primary goals of the Plan. This goal is achieved by rate reductions and the elimination of price differentials between the interstate and state jurisdictions.²⁰ Yet, some parties continue to pound the misleading drumbeat that arbitrage can be eliminated only if all intercarrier rates are set at the same level for all carriers. Perhaps most prominent among those parties is CTIA, which states that “disparate compensation obligations” for different categories of traffic create incentives for carriers to “route or

¹⁷See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92 (rel. April 27, 2001) at para. 37.

¹⁸See Comments of Time Warner Telecom, CBEYOND, Inc. and Expedius Communications, LLC, at 6.

¹⁹See Missoula Plan Appendix D, at 99.

²⁰See Missoula Plan Executive Summary at 1.

characterize traffic in order to arbitrage the system to reduce their intercarrier compensation costs.”²¹ CTIA’s comments, however, disregard the underlying causes of arbitrage and how the Plan’s rate changes for all tracks would diminish current arbitrage incentives.

Contrary to CTIA’s contention, arbitrage of terminating rates will be reduced, if not eliminated, under the Plan since terminating rates will be unified for carriers in Tracks 1 and 2, and capped at interstate access levels for carriers in Track 3. The root cause of terminating arbitrage - different rates for essentially the same services provided by a *single* carrier - is addressed under the Plan. In particular, in Track 3, the biggest incentive for arbitrage – differences between intrastate and interstate access – will be eliminated. Therefore, any carrier that was intentionally misrouting intrastate traffic as interstate in order to avoid higher intrastate access rates will be deprived of that incentive.

The Plan’s Phantom Traffic proposal, discussed later in these comments, forecloses another primary source of arbitrage - intentional misidentification or lack of identification of the originating carrier of traffic. And, the Telephone Numbers Rule, also discussed later in these comments, resolves disputes regarding the routing and rating of calls.

The combination of rate unification for each individual carrier, the Phantom Traffic solution, and the Telephone Numbers Rule will alleviate greatly arbitrage incentives about which CTIA and all carriers are so rightly concerned. It appears that CTIA either misunderstands how the Plan will stem arbitrage, or is trying to confuse the issue in an attempt to bolster its own advocacy of a bill and keep solution that would greatly harm rural consumers.

²¹ See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Comments of CTIA – The Wireless Association, (“CTIA METE Plan”) at 11 (filed May 23, 2005).

B. THE RATE LEVELS AND STRUCTURE PROPOSED BY THE MISSOULA PLAN ARE APPROPRIATE AND SHOULD BE ADOPTED.

1. The Maintenance of Separate Rates for Access and Reciprocal Compensation is Appropriate and Lawful.

The rates proposed in the Plan are lawful and are based upon sound public policy considerations. Some parties argue incorrectly that the rates for access services are improper because they are not established by direct reference to a forward-looking economic cost (FLEC) study. Some of these same parties also dispute the Plan's allowance that carriers can retain originating access charges, arguing that carriers should not be allowed to assess charges based upon the origination of traffic. For example, Feature Group IP asserts that all intercarrier charges should be restricted to only those involving termination, and that such charges should reflect the "additional cost" standard for pricing reciprocal compensation in Section 252(d)(2) of the Act.²² Core Communications, Inc., argues in a similar vein that the Commission should grant its forbearance petition, which requested forbearance from Sections 251(g) and 254(g) of the Act,²³ and essentially calls for an elimination of access charges, in general, and originating compensation, in particular. Access, however, is a distinct service. Access charges are not a "carve out" of reciprocal compensation rules, and, should therefore appropriately remain a separate and distinct charge. This distinction was recognized by the Commission in the *Local Competition Order*.²⁴ The Commission stated, "We conclude, however, as a legal matter, that *transport and termination of local traffic are different services than access service for long*

²² See Comments of Feature Group IP at 19.

²³ See Comments of Core Communications, Inc. at 12, 13.

²⁴ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, and *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, First Report and Order, FCC 96-325 ("*Local Competition Order*") (rel. Aug. 8, 1996) at para. 1033.

distance telecommunications. Transport and termination of local traffic for purposes of reciprocal compensation are governed by sections 251(b)(5) and 252(d)(2), while access charges for interstate long-distance traffic are governed by sections 201 and 202 of the Act.”²⁵ In addition to the Commission’s statements regarding the differences between access services and reciprocal compensation, the D.C. Circuit Court of Appeals indicated that “everyone agrees” that Section 251(b)(5) “doesn’t apply” to an “interexchange phone call.”²⁶

Furthermore, since interexchange carriers (IXCs) are the retail provider of toll services to subscribers, it is appropriate to maintain originating access charges in order to ensure that IXC rates reflect accurately the total cost of providing toll service. IXCs use the local networks of RLECs to originate calls for which the IXC is the sole recipient of end-user revenue. Therefore, the IXC should compensate the RLEC for the cost the RLEC incurs in originating that call. Maintaining originating and terminating access charges will ensure that the IXC pays its share of the cost associated with the end-to-end transmission of toll calls. Toll charges that reflect the entire cost of the call (rather than toll charges that reflect only terminating costs) will result in more efficient resource allocation, as subscribers will associate all toll charges with the costs for toll calls.

The Plan is a transitional process, and, as such, it provides for a review of intercarrier compensation in year four of the Plan. Among the issues to be reviewed at Step 4 are: the effects on the industry and the public interest of the intercarrier reform implemented under the Plan; the extent to which adjustments to the compensation structures and rate levels articulated by the Plan are necessary; whether the uniform target rates should be reduced, increased, or kept the same;

²⁵ *Id.* (emphasis added)

²⁶ See, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of Verizon in Response to *Further Notice of Proposed Rulemaking* (filed May 23, 2005) at 41, *citing* Transcript of Oral Argument, *WorldCom Inc. v. FCC*, Nos. 01-12 18 *et al.*, at 9, 10 (D.C. Cir. Feb. 12, 2002).

whether carriers should move to a capacity-based structure; and, whether remaining originating switched access and transport and termination charges should be replaced with a system based more fully on end-user recovery. These issues clearly address rate structures and levels under the Plan, which are elements of the Plan that are being criticized, as discussed above. It would be far better to implement the phased intercarrier compensation reforms contained in the Plan, and to then evaluate the effects of such reforms at Step 4, rather than to initially implement radical changes to intercarrier compensation as proposed by some parties. If additional changes to rate structures and levels are deemed appropriate after the evaluation at Step 4, then the Plan envisions implementation of such changes beginning in Step 5 of the Plan.

2. The Rate Levels and Structure in the Plan Recognize Appropriately Cost Differences Due to Carrier Size and the Nature of the Area Served.

The Plan recognizes rationally and appropriately the fact that cost differences emerge on the basis of carrier size and the nature of the area served. Despite the Plan's incorporation of these axiomatic components of rate-making, several parties argue incorrectly that the Plan's rates are not related to differences in cost. Track 3 carriers, however, have target rates that are significantly higher than Track 1 carriers for one simple reason: areas served by Track 3 carriers are more costly to serve. Track 3 rates are based upon costs as determined by Parts 36 and 69 of the FCC rules. In its pioneering *White Paper II – The Rural Difference*,²⁷ the Rural Task Force (RTF) documented clearly the many reasons why rural carriers experience costs that are significantly higher than those of urban carriers. Among the factors cited by the RTF were low subscriber density, challenging terrain and operating environment, and long distances between

²⁷ *The Rural Difference*, Rural Task Force White Paper 2, January, 2000. A copy of this paper may be found at http://www.wutc.wa.gov/rtf/old/RTFPub_Backup20051020.nsf/e1b9e65978d9348b882567d2008318d3/4951d0c8d59b2d4d8825687000826423!OpenDocument.

network facilities.²⁸ Those conditions are as existent and applicable today as they were when the paper was released.

Somewhat bewilderingly, ALLTEL argues that none, or nearly none, of the costs of local switching are usage sensitive, and that the Plan “unreasonably and unlawfully” would allow the recovery of non-usage sensitive costs through usage sensitive charges.²⁹ ALLTEL attempts to supports this claim by citing select Commission and state commission decisions that found some switching costs were generally not usage sensitive. ALLTEL, however, ignores other evidence that indicates that the *majority* of switching costs are, in fact, usage sensitive.³⁰

Furthermore, as indicated above, the Commission has considered since 2003 the issue of whether it would be appropriate to require that switching costs be recovered solely through flat-rated charges. If the Commission had been convinced by the evidence presented in the *TELRIC NPRM* proceeding that switching costs should be recovered solely through flat-rated charges, then ample time has passed during which the FCC could have ordered recovery consistent with such a finding. The Commission, however, has made no such determination. Therefore, the Commission should dismiss ALLTEL’s arguments that the Plan’s switching rates are unreasonable and unlawful, and adopt the Plan’s switching rates as proposed.

²⁸ *Id* at 8.

²⁹ See Comments of ALLTEL Communications, Inc. and SunCom Wireless, Inc. at 14, 15.

³⁰ For example, in Nebraska, Western Wireless Corporation argued in an interconnection arbitration “that the current and reasonably anticipated volume of traffic on the networks is so small, and that the smallest available switches are so powerful, that it is not appropriate to characterize the switches as having any cost that varies with use or that contributed additional cost to the termination of calls.” The Nebraska Public Service Commission (NPSC), however, disagreed and approved usage sensitive rates for the switch processor/matrix, stating, “...that switch costs should be shared by users of switching resources.” The finding of the NPSC (that the switch processor/matrix costs should be included in a per-minute compensation rate) was upheld by the United States District Court for the District of Nebraska and the United States Court of Appeals for the Eighth Circuit.

Sprint Nextel argues that the dedicated transport rates proposed in the Plan are “grossly inflated.”³¹ Sprint Nextel claims that ILECs should charge “cost-based” rates for dedicated transport, which Sprint Nextel defines to be rates based on FLEC, plus a profit (in other words, the current rate development formula for unbundled network elements).³² Despite Sprint Nextel’s protestations, the dedicated transport rates proposed in the Plan are “cost-based” upon cost rules that have been promulgated for access services. Furthermore, the Commission indicated in the Local Competition Order that states should use existing rates for interstate dedicated switched transport as a default proxy ceiling for dedicated transmission links.³³ In ordering this pricing methodology, the Commission stated, “We believe these rates [interstate dedicated switched transport] are currently at or close to economic cost levels. Such rates were set based on interstate special access rates, which we found based on the record in the *Transport* proceeding were relatively close to costs.”³⁴ In light of this clear Commission statement, Sprint Nextel’s assertion that the proposed dedicated transport rates in the Plan are “grossly inflated” is without merit.

Moreover, the transport rates reflect the greater transport distances experienced by carriers in Track 2 and Track 3. For example, the transport rates for carriers in Track 2 are higher than the transport rates for carriers in Track 1, reflecting greater transport distances for Track 2 carriers. Further, the rates for transport in Track 3 as proposed in the Plan will continue

³¹ See Comments of Sprint Nextel Corporation at 12.

³² *Id.* at 12, 13.

³³ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, and *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, First Report and Order, FCC 96-325, at para. 821 (rel. Aug. 8, 1996) (“*Local Competition Order*”).

³⁴ *Id.*

National Exchange Carrier Association (NECA) banding to recognize transport cost differences among the approximately 1,100 rural ILECs.

Sprint Nextel also offers what appear to be conflicting recommendations regarding the presence of competition and pricing. With regard to dedicated switched transport, Sprint Nextel recommends rate caps until the dedicated switched transport market becomes effectively competitive, as measured by the *Triennial Review Order* high capacity transport triggers.³⁵ However, in another portion of its comments, Sprint Nextel recommends that the entire track system should be eliminated when what Sprint Nextel refers to as a “competitive trigger” is met;³⁶ Sprint Nextel proposes that all carriers should be treated as Track 1 carriers as soon as there are two facilities-based competitors providing all of the services designated for universal service support.³⁷

On the one hand, Sprint Nextel seeks to cap dedicated transport rates in a market until alternative wholesale transport services exist or are likely to exist based upon a substantial number of business lines served within the market area.³⁸ Yet, on the other hand, Sprint Nextel seeks to cap rates for Track 2 and Track 3 carriers upon the designation of a facilities-based eligible telecommunications carrier (ETC) in addition to the ILEC in a given market. Due to the fact that facilities-based ETCs are not required to demonstrate their ability to serve the entire area for which they are seeking ETC status prior to being so designated, the presence of a facilities-based ETC in addition to the ILEC does not assure that all consumers have access to

³⁵ See Comments of Sprint Nextel at 13.

³⁶ *Id.* at 32.

³⁷ *Id.*

³⁸ See *Unbundled Access to Network Elements*, WC Docket No. 04-313, and *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers: Order on Remand*, CC Docket No. 01-338, FCC 04-290, at para. 126 (rel. Feb. 4, 2005).

alternative service providers. This is especially true in rural areas, in which facilities-based ETCs, such as CMRS carriers, may serve areas around cities and along heavily-traveled roads, but may not provide service in more sparsely populated areas. Sprint Nextel's recommendation would reduce drastically the rates that could be charged by Track 2 and Track 3 carriers to levels well below cost. Sprint Nextel's proposals regarding the measuring of "effective competition" should be disregarded by the Commission, as these proposals are merely an attempt to reduce rates to less than cost-based levels.

C. CTIA'S RE-INTRODUCTION OF ITS METE PROPOSAL DEMONSTRATES ITS CONTINUED UNWILLINGNESS TO ENGAGE IN MEANINGFUL REFORM DIALOG.

CTIA's comments offer little substance in terms of new or constructive proposals for the reform of intercarrier compensation rates. Instead, CTIA references its *METE Proposal*, which was first submitted in May 2005.³⁹ That proposal, which is unchanged since its inception more than a year and a half ago, would unify all intercarrier rates at a default rate of zero for origination and termination and provide compensation only for inter-network transport or transit based on forward-looking costs.⁴⁰

It is reasonable to view CTIA's submission of this warmed-over "bill and keep" plan as an indication that CTIA is not realistically interested in participating in meaningful reform, but rather chooses to hold the line with a position that has been publicly rejected by Commission. Only two months after CTIA's initial filing, Chairman Martin doubted the viability of bill and keep, stating, "I am not sure that such a proposal, which also necessitates large increases in end-user charges and/or the creation of a new universal service high cost fund, is as politically viable

³⁹ See CTIA Comments and accompanying *METE Proposal*, initially filed May 23, 2005.

⁴⁰ See *METE Proposal* at 6.

– especially in the short run.”⁴¹ Meanwhile, a number of commenters argue that even the Track 1 rates that are proposed in the Plan are below cost, let alone “zero,” as rates would be under CTIA’s plan.⁴²

⁴¹See Remarks by Chairman Kevin J. Martin, Chairman, Federal Communications Commission, to the NARUC Summer Meeting, Austin, Texas, July 26, 2005.

⁴² See Comments of Time Warner Telecom, CBEYOND, Inc. and Expedius Communications, LLC at 5; Cavalier, McLeod, NorLight, PacWest, and RCN at 47.

III. THE RESTRUCTURE MECHANISM IS A CRITICAL COMPONENT OF THE PLAN AND MUST BE ADOPTED ALONG WITH OTHER PLAN ELEMENTS.

The RM is a critical component of the Plan, and must be adopted along with other Plan elements in order to ensure the rational implementation of changes in intercarrier compensation mechanisms that reflect appropriately the value of interconnection to the ILEC networks. Several commenters who oppose the Plan and the utilization of the RM, however, argue incorrectly that there is no basis for maintaining existing ILEC revenue streams.⁴³ As discussed below, these commenters overlook both existing rules and regulations and the sound policies upon which they are based.

Other parties complain that the RM, if provided only to ILECs, would harm CLECs who may also experience revenue reductions as a result of the Plan.⁴⁴ These commenters disregard the fact that the Plan does make RM available to CLECs. The Rural Alliance has, in fact, proposed that the RM should be implemented in a manner that ensures that all LECs, regardless of whether they are ILECs or CLECs, recover interconnection revenues from the RM to the extent that access revenue generated by existing access charges are reduced as a result of the access charge reductions that the Plan provides.

In this regard, there exists an area of difference among the Missoula supporters irrespective of the significant and meaningful industry consensus that the Plan represents. While some Missoula supporters and other parties assert that the RM must be considered a form of universal service support under section 254 of the Act and made available only to competitive

⁴³ See, e.g., CTIA at 27, Cavalier Telephone, *et al.* at 9, Time Warner Cable at 2, 3

⁴⁴ See, e.g., Comptel at 6, RNK Telecom at 35, US Cellular Corp. at 11, Time Warner *et al.* at 13.

eligible telecommunications carriers (CETCs) on a per-line basis,⁴⁵ the Rural Alliance maintains that the RM should be implemented as an access element pursuant to Section 201 of the Act.

A. THE COMMISSION SHOULD ADOPT CHANGES IN THE INTERCARRIER COMPENSATION MECHANISMS THAT ENSURE THAT ALL WHO BENEFIT FROM INTERCONNECTION TO THE NETWORKS OF RURAL RATE-OF-RETURN CARRIERS PAY AN EQUITABLE PORTION OF THE COSTS CURRENTLY RECOVERED FROM ACCESS CHARGES – THE ADOPTION OF THE RM AS PROPOSED BY THE RURAL ALLIANCE WILL ACHIEVE THIS OBJECTIVE.

The RM, as proposed, provides a rational mechanism to recover costs of providing service that are currently recovered from existing intrastate and interstate access elements. With respect to the rural RoR carriers, the issue before the Commission is not how much of the rural LEC's costs should be recovered from charges for interconnection to rural networks. Rules exist with respect to the allocation of a regulated carrier's costs, and changes in those rules are not under consideration in this proceeding.⁴⁶ For rural RoR carriers and their customers, the issue raised by the concerns addressed in this proceeding is the determination of a preferable rate design to recover revenues currently recovered from access charges assessed to interexchange carriers.

The interest and willingness of the rural RoR carriers to participate in and support the Missoula Plan is largely driven by the understanding of the need for change in the manner in which interconnection to the rural LEC networks is charged. The Rural Alliance has proposed the establishment of the RM in a manner that is consistent with both public policy and Commission precedent. In the evolution that took place almost 25 years ago to a competitive

⁴⁵ See, e.g., GCI at 48, 86.

⁴⁶ See, e.g., 47 C.F.R. Parts 32 and 36. The Rural Alliance notes that each state generally determines how much of an incumbent LEC's intrastate costs are recovered from customer charges and the level of intrastate access charges the incumbent may charge.

long distance environment, the change in the then existing intercarrier compensation mechanisms from traditional “division of revenues” to the access charge regime made sense. The changes undertaken at that time by the Commission ensured the continuation of an appropriate balance in the recovery of costs of rural RoR carriers from charges to rural customers and charges to other carriers and their customers who benefit from the ability to reach and be reached by consumers residing in high cost to serve areas.⁴⁷

Similarly, in today’s environment, including the migration of traffic from traditional interexchange carriers to CMRS and VoIP providers, changes in the existing intercarrier compensation mechanisms should equally ensure that the costs of interconnection to the rural RoR carrier LEC networks are borne fairly by all who benefit from the interconnection. The adoption of the RM as an access element pursuant to Section 201 of the Act will achieve this objective. With respect to rural RoR carriers, the implementation of the RM as proposed by the Rural Alliance provides the Commission with a mechanism to reform intercarrier compensation on a cooperative basis with state regulatory commissions and within a framework that does not impose additional stress on the Universal Service Fund mechanisms.

B. IMPLEMENTATION OF THE RM AS AN ACCESS CHARGE ELEMENT IS CONSISTENT WITH THE ACT, PRIOR COMMISSION PRACTICE, AND PUBLIC POLICY

This proceeding is hardly the first occasion when the Commission has faced the challenge of revising intercarrier compensation mechanisms in order to better align those mechanisms with changing technology and a changing market-place. The Commission has continually recognized the need to ensure that the revenues of rural rate-of return carriers must

⁴⁷ See, e.g., Third Report and Order, *MTS and WATS Market Structure*, 93 F.C.C.2d 241, para. 209 (1983) (“*Third Report and Order*”).

equitably be borne in part not only by rural end-users, but by all who can connect to the rural markets. The Commission's own words in this regard provide a useful reminder:

If instead all end users are expected to bear the costs of all plant in their exchange area used to provide access service to interstate carriers, whether the resulting charge is flat, usage sensitive or a combination of both, almost certainly that approach will result in costs being recovered from customers who have not caused the exchange carrier to incur those costs. In particular, end users will be subsidizing the use of their local facilities by those terminating calls in their exchange area. Such an unfair result cannot be in the public interest.⁴⁸

Consistent with this fundamental and long-standing precept, the Commission transitioned intercarrier compensation from traditional division of revenues to an access structure at divestiture. In implementing this structure, however, the Commission did not rely exclusively on the utilization of access charge elements assessed to interexchange carriers. The Commission recognized that all users of the public switched network benefit from the ability to reach and be reached by networks serving higher cost to serve areas.

Accordingly, the Commission in 1983 determined that the recovery of a portion of the revenues necessary to sustain operation and investment in such areas should be borne equitably by all users. The Commission implemented pooled access and end-user charges (assessed by LECs on all customers) as a mechanism to collect revenues for interconnection to all carriers.⁴⁹ Contrary to the comments of some parties, the Commission not only has clear authority to implement the RM as an access element pursuant to Section 201 of the Act, but, as referenced

⁴⁸ *Third Report and Order* para. 209.

⁴⁹ *Id* at para. 42 *et seq.*

above, it has implemented a similar mechanism in the past for precisely the same reasons that the Rural Alliance proposes the adoption of the RM as an access element.⁵⁰

The Commission's prior practices and established policy also demonstrate why the RM should be established as an access element under Section 201 and not as part of the Universal Service Fund mechanism. As proposed, the RM will recover revenues that are associated with access costs of rural RoR carriers, and not universal service support. As NTCA explains, the RM is intended to compensate LECs for costs imposed on their networks by other carriers:

Unlike universal service which is intended to provide consumers with affordable basic local service, access charges are used to compensate rural carriers for the legitimate costs associated with making their networks available for use by competing carriers. Providing competitors access to a LEC's network is not the same as providing consumers with the nine listed services in the definition of universal service.⁵¹

Some commenters nonetheless suggest that the RM can only be implemented pursuant to the universal service provisions of the Act, and as such must be made available on a portable basis to all ETCs.⁵² The RM, however, is proposed as a mechanism to recover and distribute revenues associated with interconnection costs, not universal support. Accordingly, the RM should neither be considered universal service funding under section 254 of the Act, nor should it be made portable.⁵³

⁵⁰ See, e.g., Comments of The National Association of State Utility Consumer Advocate (NASUCA) at.66. NASUCA may not have recalled the original FCC access orders which served rural consumers so very well when it incorrectly states, "While the Commission may establish interconnection rate elements, there is no basis under Section 201 for assessing all other carriers (and their customers) to replace access revenues lost as a result of ICC reform."

⁵¹ NTCA at 7.

⁵² E.g., GCI at 86, Time Warner Cable at 27.

⁵³ OPASTCO at 7, Rural Group of Independents at 4, Rural ILECs at 3, Wyoming Rural Independents at 10.

The establishment of the RM arises exclusively as a result of the need for a mechanism to recover a substantial portion of interconnection revenues in an equitable manner consistent with Commission policy and past practice. Accordingly, the RM should be available to carriers as an access element to replace revenues generated from existing access charges to interexchange carriers that will be reduced by the implementation of the Plan. While exacerbating the pressures on the current universal service support system may be alluring to some parties, the Rural Alliance suggests that there is no basis in law or policy to give credence to any proposal to establish the RM as portable universal service funding. RM should be available to all carriers to offset access revenue loss resulting from implementation of access charge reductions under the Plan. The implementation of the RM as portable USF, however, would provide unwarranted windfall to some carriers and inflate needlessly the size of the RM and USF.

C. CRITICISMS OF THE RM ARE MISPLACED AND MISDIRECTED.

Many of the comments that address and criticize the proposed RM are misplaced. Instead of focusing on the need for rational changes in intercarrier compensation, these commenters use the forum of their comments to mount a collateral attack on RoR regulation, a matter that is not under consideration in this proceeding. Other comments by members of the competitive LEC industry misdirect their criticism of the proposed RM because of their concern that they will not be able to obtain revenues from the RM. Competitive carriers that experience access revenue loss resulting from reduced access charges will, however, recover revenues from the RM to offset the access charge revenue loss if the RM is established in the manner proposed by the Rural Alliance.

1. The Continuation of RoR Regulation is Not an Issue in This Proceeding; the Commission has Maintained RoR Regulation for Rural Incumbent LECs as a Means to Promote Universal Service and Investment in Networks that Support Broadband Services in High Cost to Serve Areas.

Some commenters oppose the RM simply because they find it advantageous to oppose the existing regulated mechanisms based on traditional RoR regulation.⁵⁴ The Commission, however, has not proposed either to eliminate existing RoR regulation or to review or otherwise second-guess state regulatory mechanisms and resulting intrastate access revenue levels. The pressing need before the Commission is to implement rational changes in intercarrier compensation mechanisms in the context of the existing regulatory regimes applicable to all carriers including RoR carriers. The public interest is not served by those parties that would attempt to distract the Commission from this mission by instead revisiting the need for maintaining the availability of RoR regulation for rural incumbent telephone companies. The Commission has consistently determined that forcing rural telephone companies to adopt price cap or TELRIC-price regulation for intercarrier compensation would be contrary to the public interest and harmful to rural consumers.⁵⁵

⁵⁴ See, e.g., ALLTEL at 16, 17.

⁵⁵ See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, *Second Report and Order*, 5 FCC Rcd 6786, 6799 (1990); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, *First Report and Order*, 11 FCC Rcd 15499 at para. 706 (1996). See also, *Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation*, CC Docket No. 92-135, *Report and Order*, 8 FCC Rcd 4545 (1993), at para. 9; Federal-State Joint Board on Universal Service, Multi Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, 96-45, *Fourteenth Report and Order*, *Twenty-Second Order on Reconsideration*, and *Further Notice of Proposed Rulemaking in CC Docket No. 96-45*, and *Report and Order in CC Docket No. 00-256*, 16 FCC Rcd 11244 (2001) (*RTF Order*); *Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256*, *Fifteenth Report and Order in CC Docket No. 96-45*, and *Report and order in CC Docket Nos. 98-77 and 98-166*, 16 FCC Rcd 19613 (2001) (*MAG Order*); and Rural Task Force, White Paper 4 (Sept. 2000).

The implementation of the RM as an access element will provide rural RoR carriers with the lawful opportunity to maintain existing revenue levels that recover the costs of providing high-quality, affordable services. The adoption of the Rural Alliance proposal will also encourage continued investment in rural networks that will support and foster the provision of advanced services in high-cost rural areas. The underlying long-standing Commission policies are equally relevant in an environment of evolving technology where investment in critical high quality rural networks is necessary to support connectivity not only to other wireline telecommunications providers, but also to CMRS networks, VoIP services, and other newly emerging broadband networks.

Those Parties that oppose the establishment of the RM mechanism, as proposed by the Rural Alliance, ignore the stark reality that in high cost rural areas, a carrier whose access rates are reduced to below-cost levels cannot simply increase local rates and be able to achieve full cost recovery. The high cost of deploying telecommunications facilities and providing telecommunications services in such areas does not permit end-user or subscriber rate increases sufficient to recover the displaced access revenues and still maintain universal service at affordable rates. These very same concerns have led the Commission in the past to adopt mechanisms similar to that proposed by the Rural Alliance as a means to ensure that the costs of interconnection to the high cost to serve rural networks are borne equitably.

Accordingly, the Rural Alliance urges the Commission to adopt the Plan with the implementation of the RM as an access element that provides all carriers with an opportunity to recover revenues resulting from reductions in access charges. Rural RoR carriers (Track 3 carriers under the Plan) respectfully submit that the Plan is not useful, supportable or lawful if it is adopted without the establishment of a non-portable RM. The Rural Alliance support of the

Plan, including the access rate reductions set forth in the Plan, is inextricably tied to the availability of the RM that will enable rural telephone companies to maintain high-quality, affordable network services to rural consumers. Absent the availability of the RM to offset loss of existing access revenues, the Track 3 rural carriers would no longer be able to maintain existing services, precluding further expansion of networks that support broadband capabilities in rural America.⁵⁶

2. Competitive Carriers are Entitled to Obtain Revenue Recovery From the RM in the Same Manner that Incumbent LECs Receive RM. Adoption of the RM as an Access Element under Section 201 of the Act Ensures this Result.

Some commenters argue that the RM may unfairly advantage ILECs over CLECs. For example, CompTel contends that the Plan does not specify clearly whether RM amounts will be available to other carriers, but instead leaves this issue to future determination.⁵⁷ Other competitive carriers misconstrue the Plan and complain the RM would insulate recipient ILECs from marketplace risk.⁵⁸

These arguments assume that ILECs and their competitors operate on a level playing field when in fact they do not. The Act itself recognizes that ILECs occupy a unique place in the market by applying far more stringent obligations on these carriers than competitors. Under the Commission's rules, ILECs, particularly those operating under RoR regulation, are subject to the full panoply of Title II regulation, including requirements to file with the Commission cost-

⁵⁶ Rate of return ILECs provide service to almost half of the land area in the 50 states. Telecommunications Deregulation, A Balancing Act for Rural America, at 3, Foundation for Rural Service (Apr. 24, 2006), http://www.frs.org/content_documents/TelecommunicationsDeregulation.pdf.

⁵⁷ CompTel at 6, *quoting* Plan at 13, 63.

⁵⁸ *See, e.g., Cavalier, et al.* at 10-11.

supported tariffs and extensive cost and other data.⁵⁹ Other carriers are not subject to these additional requirements, although no statute prevents a competitive carrier from asking for a “level playing field” that subjects it to regulatory treatment similar to that which is applicable to incumbent LECs .

Most importantly, ILECs are required to act as carriers of last resort (COLR) in their respective serving areas, and are typically required to provide and maintain service availability in areas that are too sparsely populated to sustain competitive entry at all. While competitive carriers can selectively take customers or abandon markets, ILECs must serve all and must maintain their networks in “ready to serve” condition. The revenues that would be paid to rural RoR carriers from the RM represent an equitable portion of revenues that have been recovered from both interstate and intrastate access charges. These revenues are part of a regulated carrier’s recovery of the cost of deploying and maintaining COLR networks.⁶⁰ Neither the Plan as a whole nor the RM shield carriers from the market place, as some commenters suggest. The RM, as proposed by the Rural Alliance, only provides a new mechanism for rural RoR carriers to recover interconnection revenues that are currently recovered from existing access charges.

Contrary to the protests of some competitive carriers, as referenced above, the Plan provides access to the RM for competitive carriers, and not only to incumbent LECs. Under the Rural Alliance proposal for the implementation of the RM as an access element under Section 201 of the Act, all carriers (both incumbent LECs and competitive carriers) will receive revenues for interconnection services from the RM if they currently provide access services and

⁵⁹ See, e.g., 47 USC 251-253 and 47 C.F.R. Parts 32, 36, 51 and 69.

⁶⁰ With respect to those costs allocated to the intrastate jurisdiction, the Plan recognizes that existing ILEC intrastate access rate levels are based on widely divergent state regulatory approaches, and accordingly proposes to address these disparities via the Early Adopter Mechanism.

experience reductions in access revenues as a result of the implementation of reduced access charges in accordance with the Plan.⁶¹

As discussed above, the implementation of the RM as proposed by the Rural Alliance is a fair and equitable element of the Plan that is consistent with the Commission's jurisdiction, the Commission's past practices, and with the continuing public policy need of ensuring that the costs of interconnecting to the rural telephone company networks in high cost to serve areas of the Nation are borne equitably by all who benefit from the ability to reach and be reached by the consumers served by those rural networks.

⁶¹ The Rural Alliance respectfully notes that notwithstanding the protestations of carriers that purport to envy the position of incumbent LECs, competitive carriers will receive RM under the Plan without incurring any regulatory accounting or ratemaking responsibilities, and similar to the same manner pursuant to which they are currently permitted to establish access charges absent the requirement to provide cost support for their charges.

IV. THE MISSOULA PLAN CONTAINS SIGNIFICANT IMPROVEMENTS IN INTERCONNECTION RULES AND COMPENSATION OBLIGATIONS THAT WILL RESOLVE MANY EXISTING DISPUTES AND AMBIGUITIES AND BENEFIT RURAL CONSUMERS.

A. THE RURAL TRANSPORT RULE

1. The Rural Transport Rule is Consistent with the Act and the FCC's Rules.

Contrary to what is suggested by commenters opposing the Rural Transport Rule (RTR), incumbent LECs, including rural ILECs, do not have a responsibility to provide interconnection at a point beyond their own network facilities.⁶² Section 251(c)(2) of the Act states, in pertinent part, that such carriers only have the “duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection *with the local exchange carrier's network . . . at any technical feasible point within the carrier's network*” (emphasis added). Section 51.305 of the Commission's rules, in a consistent manner, directs, “an incumbent LEC shall provide . . . *interconnection with the incumbent LECs network . . . at any technically feasible point within the incumbent LEC's network . . .*” (emphasis added). The same rule also provides that the interconnection need only be provided “at a level of quality that is equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other party.”

Moreover, the rule further states specifically that “[a] carrier that requests interconnection solely for the purpose of originating or terminating its *interexchange traffic* on an incumbent LEC's

⁶² The related “transport rules” can be found in Section II.E of the Plan. The RTR provisions are more specifically found in Section II.E.3.e “Transport Rules for CTRCs.” The RTR includes, in part, the following rules in defining the scope of the “Track 3 ILEC transport obligation”: (1) Track 1 carriers have a financial obligation to transport their originating traffic to the Track 3 ILEC's Edge, as specified in Section II.E.1.a; (2) A Track 1 carrier also will bear the financial obligation for provisioning the interconnection transport to carry traffic (in both directions) between its Edge and the meet point of the Track 3 ILEC. The Track 1 carrier will determine whether the interconnection transport should be provided through direct interconnection or through an indirect arrangement; (3) if a Track 1 carrier elects to interconnect indirectly, it will be the Ordering Carrier for the Tandem Transit Service to transport the Track 3 ILEC's originating traffic from the meet point to the Track 1 carrier's Edge; and (4) if the Track 1 carrier provides dedicated transport through a direct interconnection arrangement, the Track 3 ILEC will compensate the Track 1 carrier on a flat rated basis for 50 percent of the capacity required to transport its traffic from the meet point to the terminating Track 1 carrier's Edge. This obligation extends only to the first ten miles of such transport capacity.

network and not for the purpose of providing to others telephone exchange service, exchange access service, or both, is not entitled to receive interconnection pursuant to Section 251(c)(2) of the Act” (emphasis added). Together, these provisions dictate that that when a competitive carrier (regardless of whether it is a CLEC or CMRS provider) requests interconnection pursuant to Section 251 of the Act, the incumbent LEC must only establish an interconnection point within its incumbent LEC network. The RTR recognizes and upholds appropriately this interconnection obligation. The RTR recognizes, consistent with the Act and the Commission’s rules, that rural carriers with limited service areas and smaller networks should not be burdened with extraordinary transport obligations that may extend far beyond their areas of operation.

Generally, where two carriers interconnect for purposes of exchanging local traffic, and as in the case of a traditional Extended Area Service (EAS) arrangement, a point of interconnection (POI) between the two networks is established and each carrier takes responsibility for transport to that POI. Based on the Act and FCC rules cited above, the POI, for purposes of exchanging local traffic, must be on the incumbent LEC’s network. This limitation is consistent with the obligations imposed on interconnecting carriers in traditional direct interconnect situations and, further, should be viewed as determinative in defining the responsibilities of incumbent carriers in delivering traffic.

2. The RTR Prevents an Unfair Shift of Transport Costs to Rural Carriers and Customers and is Consistent with Good Universal Service Policy.

The RTR generally provides that rural Track 3 carriers, in particular, are not required to deliver their originating traffic to locations beyond the established POI on their network facilities. It further provides, importantly, that the financial responsibility related to originating traffic does not change in situations where a competing, interconnecting carrier has chosen to

interconnect “indirectly” through the transiting facilities of another carrier. The RTR provides expressly that the requesting carrier “will determine whether the interconnection transport should be provided through direct interconnection or through an indirect arrangement.”⁶³ Thus, the carrier requesting interconnection has the option as to whether its interconnection with the rural carrier will be through direct or indirect means. If a carrier chooses to interconnect indirectly and utilize transit services to transport its traffic to the rural carrier’s service area, then it will not be permitted to shift the related transiting costs to the rural carrier and that rural carrier’s customers. The rural carrier remains responsible only for delivering its originating traffic to the POI within its established network. To the extent that another provider chooses to use the network or services of another carrier on that provider’s side of the interconnection point, then that provider is responsible for making those arrangements and is likewise responsible for the costs arising out of that decision.

CTIA and other parties that oppose the RTR provisions are effectively arguing that rural LECs should be responsible for additional costs created by the network facility choices of CMRS providers and other competitive carriers. In seeking to impose additional transport responsibilities on rural LECs, these parties push positions that would create unwarranted and severe financial obligations on incumbent RLECs and their end users. In the first instance, RLECs would be placed at an immediate disadvantage simply because they have more limited networks within LATAs or Major Trading Areas (MTAs). Shifting additional transport responsibilities to rural carriers and rural customers for transport services to locations far removed from existing service areas is inequitable and contrary to good universal services policy. The challenges of preserving universal service in high cost rural areas are already substantial and ought not be frustrated by adopting policies that conflict clearly with the law and

⁶³ Missoula Plan, II.E.3.e(2).

FCC Rules. The ongoing process of intercarrier compensation reform will itself implicate significant universal service concerns. The task should not be complicated by burdening rural carriers improperly with transport costs outside their service areas. It makes little sense to create an RM to prevent excessive increases to end user local service rates, particularly for rural subscribers, while permitting additional transport costs to rural carriers and subscribers, and the resultant windfall to other carriers.

3. The RTR Recognizes The Network Design Choices Of Competitive Carriers.

The Rural Alliance agrees with the Missouri Small Telephone Companies - when competing carriers choose to locate their switching facilities at locations well outside the local calling area and choose to use indirect connections for the benefit of their network efficiency, rural carriers should not be responsible to pay the cost of transporting traffic to those distant, non-local locations.⁶⁴ Competing carriers elect to deploy their networks in ways that are the most efficient for them, which they believe will foster competition in rural areas. In doing so, many competing carriers limit the deployment of switches and utilize long haul transport facilities of tandem providers to connect to the networks of Track 3 carriers. The RTR that is incorporated in the Plan places appropriately the responsibilities for the cost of this transport on the cost causer - specifically, the carrier that locates its “local switching” facilities far from the RLEC’s serving area. This sends appropriate economic signals to these carriers as they design their networks. The RTR recognizes that Track 3 carriers should not be required to subsidize carriers that seek to compete in Track 3 rate centers via indirect interconnection. Carriers seeking to compete in the rate centers of Track 3 carriers should be financially responsible, and

⁶⁴ See *Comments of the Missouri Small Telephone Companies*, CC Docket No. 01-92, at 12 (Oct. 25, 2006).

under the Plan will be financially responsible for the facilities that allow them to compete in those Track 3 rate centers.

Requiring Track 3 carriers to build out networks only to enable their competitors to compete, as suggested by ALLTEL,⁶⁵ is contrary to law, equity, and common sense. There can be no rationale to require a Track 3 carrier to build or lease facilities to a rate center where the Track 3 carrier has no intention to compete. ALLTEL's suggestion, by contrast, would result in exactly that scenario.

The wireless carriers' position and proposal are nothing more than an attempt to shift costs of their network decisions to the Track 3 carriers and their customers.

4. The RTR Will Not Discourage Intermodal Competition.

The Commission should not be persuaded by unsupported claims that the RTR would threaten intermodal competition in rural areas by making it too costly for wireless providers to interconnect with ILEC networks.⁶⁶ Wireless carriers are already interconnected with Track 3 carriers and competing within Track 3 carrier service areas. CTIA offers no evidence to support its claims that the RTR will increase wireless carriers' cost or decrease their ability to compete. The Commission should instead focus on promoting fair competition by not shifting the cost of the competitive service offerings onto Track 3 carriers and their customers.

5. The RTR Does Not "Impose" Wireline Costs On Wireless Carriers.

CTIA claims that the RTR would enable RLECs to impose inefficient legacy wireline network costs on their competitors.⁶⁷ CTIA, however, offers no evidence or rationale to support

⁶⁵ See Comments of ALLTEL Communications, Inc. and SunCom Wireless, Inc. at 11, 12.

⁶⁶ See Comments of CTIA at 19.

⁶⁷ *Id.* at 12.

its claim. CTIA overlooks the fact that if its members have more efficient ways in which to interconnect with RLEC networks, then they are free to make such choices and avoid the imposition of any so-called inefficient network costs.

6. The RTR Maintains Symmetrical Reciprocal Compensation

Verizon Wireless claims that the RTR violates the principle of reciprocal compensation.⁶⁸ Yet, nothing in the Plan eliminates 47 C.F.R. 51.711 (symmetrical reciprocal compensation). According to the Plan, where traffic is exchanged between an ILEC and a non-ILEC, the non-ILEC will charge the same reciprocal compensation rate charged by the ILEC for performance of comparable functions. Therefore, rates for transport and termination will continue to be symmetrical under the Plan.⁶⁹ Carriers that exchange telecommunications traffic with a Track 3 carrier will continue to assess the same transport and termination rate that the Track 3 carrier assesses upon them. Verizon Wireless' claim that the Plan violates this principle is incorrect, and lacks any basis in the Plan.

7. Track 3 Carriers Will Not Assess Charges on Other Telecommunications Carriers Based Upon the RTR.

Sprint claims that the RTR is contrary to 47 C.F.R. 51.703(b).⁷⁰ Sprint distorts the rule by implying that Track 3 carriers are assessing Sprint an originating charge when Sprint hauls traffic to a distant Sprint switch, at which the traffic is switched by Sprint and then hauled back to the originating location where both the originating and terminating end users reside. Given that Track 3 carriers will not be assessing any originating rate to a Track 1 carrier or receiving

⁶⁸ See Comments of Verizon Wireless at 16.

⁶⁹ See 47 C.F.R. 51.711(a)(1). Symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.

⁷⁰ See Comments of Sprint Nextel Corporation at 33, 34.

any revenue from a Track 1 carrier on the basis of the RTR, Sprint's claim that the RTR is contrary to 47 C.F.R. § 51.703(b) cannot be supported based upon the facts of the Plan.

8. The RTR Does Not Provide Disparate and Unjustified Windfalls to Track 3 Carriers.

The Commission should also not be persuaded by the claim that the RTR provides Track 3 carriers with unjustified windfalls.⁷¹ Since Track 3 carriers do not seek compensation for transport facilities which are not theirs nor cause the cost to be incurred, arguments suggesting that Track 3 carriers will receive some kind of windfall are without merit.

B. THE INTRA-MTA RULE

In the *Local Competition First Report and Order*, the Commission stated that traffic to or from a CMRS network that originates and terminates within the same MTA⁷² is subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges.⁷³ The Commission reasoned that the MTA would be the most appropriate local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5) because wireless license territories are Federally authorized and vary in size, and the largest FCC-authorized wireless license territory is the MTA.⁷⁴ Therefore, Section 51.701(b)(2) of the Commission's rules defines telecommunications traffic exchanged between a LEC and a CMRS provider that is subject to reciprocal compensation as traffic "that, at the beginning of the call, originates and terminates within the same Major Trading Area."⁷⁵

⁷¹ See Comments of Verizon at 10.

⁷² The definition of an MTA can be found in section 24.202(a) of the Commission's rules. 47 C.F.R. 24.202(a).

⁷³ *Local Competition First Report and Order*, 11 FCC Rcd at 16014, para. 1036.

⁷⁴ *Id.*

⁷⁵ 47 C.F.R. 51.701(b)(2).

The IntraMTA rule was established to determine which LEC-CMRS traffic was subject to reciprocal compensation. Some CMRS carriers have used the rule to argue that it should also determine whether LEC originated calls are subject to toll charges when such calls are placed to wireless subscribers within the MTA. Those inappropriate arguments are addressed by the Plan's telephone numbers rule, which establishes parameters to determine the appropriate intercarrier compensation regime, and accordingly defines which LEC originated calls are subject to toll charges. Under the telephone numbers rule, when the numbers of the calling and called parties are associated with the same rate center, reciprocal compensation applies. When the numbers of the calling and called parties are not associated with the same rate center, access charges apply.

The IntraMTA rule has also caused disputes between LECs and CMRS carriers over the proportion of (a) LEC originated calls to CMRS subscribers located *within* the MTA to (b) LEC originated calls to CMRS subscribers located *outside* of the MTA; this proportion implicates how many calls are subject to reciprocal compensation, and how many calls are subject to access charges. Since the location of the wireless subscriber when the call is originated has been difficult to determine, the proportion of LEC-wireless calls subject to reciprocal compensation versus access charges continues to be the topic of ongoing debate. The Plan, through the implementation of the telephone numbers rule, will resolve these disputes. Lastly, by modifying the IntraMTA rule, the Missoula Plan also resolves another weakness of the current rule, which has been to treat IntraMTA LEC to CMRS traffic differently than LEC to LEC traffic for intercarrier compensation purposes.

The Plan, through the implementation of the telephone numbers rule, resolves the Commission concerns regarding the intraMTA Rule. The Commission sought comment on how

parties should determine which LEC-CMRS calls are subject to reciprocal compensation in the absence of the intraMTA rule and whether wireline local calling areas the appropriate geographic scope for both LEC-originated and CMRS-originated reciprocal compensation calls.⁷⁶ The Commission also sought comment on how the end-point of the mobile call should be determined for purposes of establishing the appropriate intercarrier compensation regime.⁷⁷ The Commission also noted that carriers have disagreed regarding the meaning of the existing intraMTA rule regarding the routing of calls to IXC: many rural LECs have argued that intraMTA traffic between a rural LEC and a CMRS provider must be routed through an IXC and is therefore subject to access charges, rather than reciprocal compensation. CMRS providers, by contrast, have argued that all CMRS traffic that originates and terminates within a single MTA is subject to reciprocal compensation. As the following discussion will demonstrate, implementation of the Plan and its telephone numbers rule resolves this dispute as well.

1. The Plan Resolves Current Disputes Associated With the IntraMTA Rule.

The Plan resolves disputes associated with the intraMTA rule and is consistent with the overarching objectives of the Commission to simplify the intercarrier compensation system and treat all traffic utilizing the public network in an equitable manner. Invoking the telephone numbers rule as the basis for determining the compensation regime will eliminate the disparate treatment of intraMTA calls based on the nature of the terminating carrier (*i.e.*, LEC vs. CMRS carrier); eliminate confusion among carriers and regulators; and, result in consistent application of reciprocal compensation and access charges. By using the telephone numbers of the calling and called parties as the basis for determining the appropriate compensation regime for the call,

⁷⁶ *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4745, at para.136 (2005) (FNPRM).

⁷⁷ *Id.*

it will no longer be necessary to discern the location of the wireless subscriber at the time the call was originated.

2. Significant Benefits Are Achieved by Invoking the Telephone Numbers Rule and Modifying the IntraMTA Rule.

Under the telephone numbers rule, when the numbers of the calling and called parties are associated with the same rate center, reciprocal compensation applies. When the numbers of the calling and called parties are not associated with the same rate center, access charges apply.⁷⁸ This approach overcomes several problems associated with the intraMTA rule.

First, LECs generally do not have knowledge of the originating location of a wireless subscriber when the call is originated by a LEC subscriber. Therefore, the correct compensation regime is unknown for any particular call. Under the intraMTA rule, LECs must conduct traffic studies to determine the ratio of intraMTA to interMTA minutes in order to determine the quantity of minutes to bill under the proper regime. Elimination of the intraMTA rule will likewise remove the need to perform traffic studies for this purpose, saving time and costs associated with conducting and defending the results of the studies.

Second, replacing the intraMTA rule with the telephone numbers rule will align LECs' dialing parity requirements and end-user billing with the appropriate compensation regime. Under the new rule, telecommunications traffic that is subject to reciprocal compensation will be treated as a local call for dialing parity purposes and end user billing. Telecommunications traffic that is not subject to reciprocal compensation is treated as a toll call for toll dialing parity purposes and will be routed to an IXC. Unlike the results that occur using the intraMTA rule,

⁷⁸ The Rural Alliance observes that its interpretation of the telephone numbers rule is that the numbers used for the purpose of the compensation regime being either 251(g) (access) or 251(b)(5) (reciprocal compensation) are the telephone numbers associated with the end points of the transmission (the originating and terminating numbers). The Rural Alliance contends that no intermediary numbers can be utilized as an end point of such transmission. This interpretation is consistent with the Commission's orders in WC Docket No. 02-3612, *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are exempt from Access Charges*, and WC Docket No. 05-68, *Regulation of Prepaid Calling Card Services* (Jun. 30, 2006).

enactment of the telephone numbers rule will result in consistent treatment of all LEC originated traffic for intercarrier compensation purposes, regardless of the classification of the terminating carrier.

Third, traffic from a CMRS network that terminates to a LEC network will be treated as reciprocal compensation traffic when the calling and called numbers are associated with rate centers in the same MTA. This rule will resolve disputes regarding the location of the wireless subscriber when a wireless call is originated.⁷⁹ Since the end point is no longer the determinative factor as to whether calls are subject to access charges or reciprocal compensation, the need for traffic studies will be eliminated to determine subscribers' end points, saving time and money.

Replacement of the intraMTA rule with the telephone numbers-based approach will eliminate many intercarrier disputes, and instead allow carriers to concentrate more fully on the operations of their business.

3. Arguments Regarding Arbitrage Opportunities Created by Modification of the IntraMTA Rule and Implementation of the Telephone Numbers Approach are Erroneous.

Verizon Wireless argues that the telephone numbers plan erodes the MTA by creating arbitrage opportunities.⁸⁰ Further, according to Verizon Wireless, since the Plan maintains distinctions between inter- and intrastate access charges, and between access charges and reciprocal compensation, a switch to a pure telephone-number based system will encourage manipulation of telephone numbers to obtain more favorable rate treatment.⁸¹ Verizon Wireless presumably recognizes that they control which telephone numbers they provide their wireless

⁷⁹ Verizon Wireless concurs that the geographic location of the wireless subscriber is no longer easy to determine. According to Verizon Wireless, to account for this, the industry has had to turn to billing factors and other proxies. *See* Comments of Verizon Wireless at 17.

⁸⁰ *See* Comments of Verizon Wireless at 17.

⁸¹ *Id.* at 18.

subscribers. Therefore, Verizon Wireless would control whether it took advantage of so-called arbitrage opportunities. Further, it is highly unlikely that a wireless subscriber would choose a number on the basis of whether the call is subject to reciprocal compensation or access charges. It is also unlikely that subscribers are even aware of such terms or the meaning of such terms. Verizon Wireless' far-fetched argument appears only to be made in hopes of maintaining the *status quo*.

4. Modifying the IntraMTA Rule Will Not Prevent Wireless Carriers From Competing in Rural Areas.

CTIA claims that the intraMTA rule simply ensures that ILEC customers are not subject to toll charges for inter-modal calls made within the wireless carrier's local service area, and that revising the intraMTA rule would prevent wireless carriers from competing in rural areas.⁸² Such claims are incorrect and unsupportable. The intraMTA Rule is established pursuant to 47 C.F.R. 51.701, which address the scope of reciprocal compensation. 47 C.F.R. 51.701 does not address compensation arrangements or rates that a telecommunications carrier charges its end users. The rate levels, structure, terms, and conditions between ILECs and their end users have never been determined in the context of intercarrier compensation (*i.e.*, 47 C.F.R. 51.701) or based upon a wireless carrier's local service area as claimed by CTIA, but are instead approved by each state's public utility commission and are typically set forth in tariffs. Therefore, CTIA's assertion that ILEC subscribers will be assessed more toll charges than they are today if the intraMTA rule is modified is simplistically incorrect.⁸³

⁸² See Comments of CTIA at 22, 23.

⁸³ See Comments of CTIA at 25.

CTIA's claim that modifying the intraMTA Rule would prevent wireless carriers from competing in rural areas is spurious.⁸⁴ CTIA complains that ILECs receive originating access charges for intraMTA calls carried by an IXC, and claims that wireless carriers receive no such compensation when wireless originating calls are *not* carried by an IXC. CTIA, however, fails to provide any support as to how these different arrangements for traffic delivery (IXC vs. "no IXC") prevent its members from competing in rural areas if the telephone numbers approach is adopted.

Dobson Cellular claims that elimination of the intraMTA rule would encourage small ILECs to shrink local calling areas in order to decrease their termination compensation obligations and to increase their access revenues.⁸⁵ Dobson's claim would mean that many calls currently rated as a local call between a LEC's own end-users would now become toll calls. This argument ignores market and regulatory realities and consumer impacts, and demonstrates the emptiness of the wireless arguments.

5. Modifying The IntraMTA Rule Will not Result in the Violation of Any Reciprocal Compensation Rule.

Similar to CTIA's claim, Verizon Wireless argues that the Plan provides an asymmetrical compensation mechanism that does not appropriately compensate wireless carriers for transport and termination services they provide to customers of Track 2 and 3 LECs.⁸⁶ Verizon Wireless complains that when a rural wireline customer calls a wireless carrier's customer with numbers rated to different rate centers, the call is routed via a long distance carrier, and the Plan limits the

⁸⁴ *Id.* at 22-25.

⁸⁵ See Comments of Dobson Cellular at 8, 9.

⁸⁶ See Comments of Verizon Wireless at 16.

wireless carrier to receiving only Track 1 rates from the IXC.⁸⁷ Verizon Wireless, however, apparently overlooks the fact that when an ILEC routes telephone toll calls to the subscriber's preferred interexchange carrier, the call is not a call subject to transport and termination, but is rather subject to exchange access.⁸⁸ The rule Verizon Wireless mistakenly believes is violated falls under Subpart H of the Commission Rules-Reciprocal Compensation for transport and termination of telecommunication traffic. That rule, however, is inapplicable to exchange access traffic that is transported by an IXC. As such, Verizon Wireless' argument that a reciprocal compensation rule is violated is inapplicable.

6. Verizon Wireless' Arguments Suggesting that the Modification of the IntraMTA Rule Would Force CMRS Carriers to Implement the Architecture of the Landline Network is Without Merit.

Verizon Wireless argues that had the Commission not selected MTAs as the relevant reciprocal compensation scope for CMRS providers, it would have forced CMRS providers to implement the legacy architecture of landline carriers.⁸⁹ Yet, the only change made by the Plan with respect to the intraMTA rule is the classification of wireline-to-wireless calls for intercarrier compensation purposes based upon the telephone numbers rule. Wireless carriers will continue to route calls as they are today; therefore no changes to the network architecture will be required. Verizon Wireless' implication appears to be based either upon a misunderstanding of the proposed rule or a gross overstatement of its effect in order to maintain the status quo.

⁸⁷ See Comments of Verizon Wireless at 15.

⁸⁸ See *In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996: First Report and Order*, CC Docket No. 96-98, at para. 1043 (rel. Aug. 8, 1996). The Commission found that under its existing rules, most traffic between LECs and CMRS provider is not subject to interstate access charges *unless it is covered by an IXC*.

⁸⁹ See Comments of Verizon Wireless at 16, 17.

C. THE PLAN RESOLVES DISPUTES REGARDING SEPARATE RATING AND ROUTING OF CALLS.

1. By Invoking the Telephone Numbers Rule, the Plan Resolves Disputes Regarding Separate Rating and Routing of Calls.

The Plan resolves a long-standing dispute that initially was raised more than four years ago when Sprint filed a Petition for Declaratory Ruling regarding the routing and rating of traffic by ILECs.⁹⁰ Under the telephone numbers approach proposed in the Plan, separate rating and routing, as has been advocated by the wireless industry, is allowed. The Plan allows wireless carriers to receive local calling arrangements without requiring a direct connection, as has been requested by the wireless industry, providing wireless carriers their choice of network connection. As the RTR assures that the wireless carrier bears the cost of the transport choices that it makes, efficient network design choices are assured, and that RLEC customers are not unfairly burdened with less efficient design choices that the wireless carrier might make.

D. DEFAULT INTERCONNECTION RULES AND THE EDGE FRAMEWORK.

1. The Plan Establishes a Set of Default Interconnection Rules to Prevent Carriers with Market Power from Dictating Interconnection Standards.

Although the Plan establishes a set of default interconnection rules, the Plan does not prevent agreements arrived at through mutually negotiated agreements. The default rules assure that carriers that lack market power are assured of some reasonable level of interconnection and compensation, and prevent carriers with market power from dictating standards that would benefit only themselves. Although Verizon agrees that the Plan allows parties to negotiate different arrangements than those established as default standards, Verizon believes that the Plan

⁹⁰ See *Public Notice*, Comment Sought on the Sprint Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs, CC Docket No. 01-92 (rel. Jul. 18, 2002).

favors mid-sized and small rural carriers and that there will be no room to arrive at an optimal solution.⁹¹ It is no surprise that a vendor with significant power such as Verizon instead argues that a purely market-based approach, which allows only for “negotiated” commercial agreements, is the best long-term solution to ensuring the efficiency of interconnection arrangements. Yet, an approach based *only* on negotiated commercial agreements would give Verizon and other large carriers with superior bargaining power an undue advantage over small rural LECs that lack bargaining power. Thus, the default rules under the Plan are the fairest and most efficient manner in which to establish interconnection agreements in light of the uneven bargaining positions among the multitude of telecommunications carriers.

2. The Edge Proposal is Not Anticompetitive and Does Not Force Carriers to Duplicate the Existing ILEC Network or Force Carriers into Inefficient Forms of Interconnection.

ALLTEL claims that the proposal regarding edge designation would harm competition by forcing competitors to incur inefficient investment in duplicative facilities that would essentially replicate the existing ILEC network.⁹² ALLTEL’s claim is incorrect. Since the Plan allows carriers to interconnect either directly or indirectly, the choice as to whether ALLTEL invests in duplicative facilities would be a decision made by ALLTEL, and not one forced upon it under the Plan. Although ALLTEL agrees that the use of shared transport facilities are widely used and are an efficient method for multiple carriers to aggregate traffic,⁹³ ALLTEL appears to believe that shared facilities cannot be used, stating that, “[i]f a competitive carrier had to connect to every ILEC node, they would be forced to incur inefficient investment in duplicative

⁹¹ See Comments of Verizon at 19.

⁹² See Comments of ALLTEL at 21.

⁹³ See Comments of ALLTEL at 21, 22.

facilities.”⁹⁴ Under the Plan, ALLTEL will be able to continue using shared transport facilities that exist today between the tandem provider and the Track 3 carriers’ end office switch locations. Accordingly, ALLTEL’s hypothetical situation is totally incorrect. It would only choose to directly connect if this were the more efficient solution.

CTIA also appears to misunderstand the Plan with respect to Track 3 Edge requirements. CTIA believes that the Plan dismantles the well-established network interconnection regime by requiring an interconnecting carrier to deliver local traffic to every end office in each LATA served by an RLEC.⁹⁵ CTIA also believes that implementation of the Plan would compromise the efficient interconnection architecture set forth in the Commission’s rules. According to CTIA, competitive carriers would bear the tremendous cost of duplicating otherwise suitable for interconnections with terminating ILECs by installing trunks to multiple new Edge locations designated by the ILECs in each LATA.⁹⁶ This is not an accurate representation of the Plan’s requirements.

First, CTIA is incorrect in its assessment that there will be multiple new locations at which wireless carriers must terminate traffic. CTIA member companies today transport and terminate traffic to Track 3 carriers’ end office switch locations. Since the Plan allows any eligible end office to be declared an Edge by a Track 3 carrier, CTIA member companies will not transport and terminate their traffic to more locations than today. Second, since the Plan allows carriers to interconnect either directly or indirectly, CTIA member companies can continue to interconnect at a single location in order to transport their traffic to Track 3 carriers. In so doing, they would not bear the cost of duplicating the existing network or be required to install new

⁹⁴ See Comments of ALLTEL at 21.

⁹⁵ See Comments of CTIA at 8, 9.

⁹⁶ See Comments of CTIA at 10.

trunk groups. CTIA's member companies can, under the Plan, choose to leave their current network arrangements as they are today. If CTIA members choose to use the current shared transport facilities that exist today between the tandem provider and the Track 3 carriers' end office switch locations, there will be no need to duplicate the existing network by installing new trunk groups.

3. The Plan Does Not Increase Track 1 Carriers' Costs to Terminate Traffic to a Track 3 Carrier.

Verizon and Verizon Wireless (collectively, Verizon) offer little to explain their perception that the Plan's designation of permissible Edges is a boon or provides unwarranted benefits to Track 3 Carriers; Verizon only complains that Track 3 carriers have more choices about which points in their network to designate as their Edges than do Track 1 carriers.⁹⁷ As an example, Verizon states that a Track 3 carrier may declare any eligible end office to be an edge, even if the end office subtends the carrier's own access tandem, and that Track 1 carriers must transport their traffic to the Edge, increasing the extent to which Track 1 carriers must bear the cost of transporting all the traffic they exchange with Track 3 carriers.⁹⁸ As for Verizon's first example, very few, if any, Track 3 carriers own an access tandem. Therefore, this argument is without merit as it addresses a situation that does not exist. As for Verizon's second example, as previously explained, Track 1 carriers today transport and terminate traffic to Track 3 carriers' end office switch locations. Since the Plan allows any eligible end office to be declared an Edge by a Track 3 carrier, Track 1 carriers will not transport and terminate their traffic to more locations than they are doing today. Further, since Verizon can choose to interconnect indirectly, it is not forced to directly connect at the Edge under the Plan, allowing Verizon to leave its

⁹⁷ See Comments of Verizon at 11, and Comments of Verizon Wireless at 14.

⁹⁸ See Comments of Verizon at 11, and Comments of Verizon Wireless at 14.

current network arrangements as they are today. Therefore, its cost to transport traffic to a Track 3 carrier will most likely be the same as it is today. Accordingly, Verizon's argument that a Track 1 carriers' cost will increase when it terminates traffic to a Track 3 carrier is also without merit.

E. THE MIRROR RULE

1. The Mirror Rule Should Not be Applied to Track 3 Carriers Because of Market Conditions.

The Plan contains an unresolved dispute among Plan sponsors as to how to treat Internet Service Provider (ISP)-bound traffic in those areas served by Track 3 ILECs. The Rural Alliance supports Alternative 1, which proposes to eliminate the "mirroring rule" for ISP-bound traffic for Track 3 ILECs at the beginning of Step 1.⁹⁹ Elimination of the mirroring rule will allow Track 3 carriers to recover their cost for terminating 251(b)(5) traffic while eliminating incentives for regulatory arbitrage for ISP-bound traffic.

As part of the interim intercarrier compensation regime, the Commission adopted a series of gradually declining rate caps that a carrier could charge another carrier for delivering a call to an ISP. As an adjunct to the rate caps, the Commission adopted what became known as the "Mirroring Rule." In addition, the Commission also established what is known as the "New Markets Rule." Under the Mirroring Rule, the Commission established that rate caps on ISP-bound traffic would only apply if the LEC also offered to charge the CLEC that same capped rate to terminate local traffic that originated on the CLEC's network. Under the New Markets Rule, carriers were to exchange ISP-bound traffic on a bill-and-keep basis in the case where carriers were not exchanging traffic pursuant to interconnection agreements prior to adoption of the *ISP Remand Order* (where, for example, a new carrier enters the market or an existing carrier

⁹⁹ See *Missoula Plan* at 40.

expands into a market it previously had not served).¹⁰⁰ The Commission implemented the New Markets Rule in order to address and curtail a pressing problem that had created opportunities for regulatory arbitrage by confining this market problem to the maximum extent possible while seeking an appropriate long term solution. Further, the Commission found that allowing carriers to expand into new markets using the very intercarrier compensation mechanisms that had led to the problems would exacerbate the market problems it sought to ameliorate.

According to the Commission, the rate caps adopted approximate the downward trend in intercarrier compensation rates as reflected in recently negotiated interconnection agreements.¹⁰¹ For example, the \$.0007/minute of use (MOU) rate reflects the average rate applicable in 2002 under Level 3's agreement with SBC. The Commission also noted that it was concerned about the superior bargaining power of incumbent LECs and therefore required that the rate caps for ISP-bound traffic would only apply if the ILEC offered to exchange all traffic subject to 251(b)(5) at the same rate.¹⁰²

The Rural Alliance agrees with the Nebraska Rural Independent Companies (the "Nebraska Companies") that the primary Commission assumptions for invoking the Mirroring Rule do not hold for most Track 3 carriers.¹⁰³ As stated under Alternative 1, Track 3 carriers are RoR carriers operating in high cost areas that will, under the Plan, apply their unified access rate on an interim basis for reciprocal compensation until those interim rates are superseded by a State-approved interconnection agreement. While the above-referenced rate caps adopted by the

¹⁰⁰ See *In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, at para. 81 (rel. Apr. 27, 2001) ("ISP Remand Order").

¹⁰¹ *Id.* at para. 85.

¹⁰² *Id.* at para. 89.

¹⁰³ See Comments of the Nebraska Rural Independent Companies, at 19-22.

Commission may be reflective of the rates found in RBOC interconnection agreements, they are in no way reflective of the costs and rates of Track 3 carriers. As the Nebraska Companies established, the rates found in their interconnection agreements that were developed pursuant to 47 U.S.C. 252(d) exceed \$.02/MOU. Given this disparity in rates, if the Commission's Mirroring Rule is not eliminated for Track 3 carriers at the beginning of Step 1 of the Plan, then Track 3 carriers may be forced to choose between under-recovering their costs for Section 251(b)(5) traffic terminating on their network or overcompensating a CLEC for ISP-bound traffic. In other words, if the Mirroring Rule is not eliminated in Step 1 for Track 3 carriers, then the only way for Track 3 carriers to prevent subsidization of dial-up Internet access customers at the expense of basic telephone service and, to avoid allowing carriers to arbitrage, is for the Track 3 carrier to accept a rate cap that, is not reflective of its costs.

The Rural Alliance concurs that contrary to the rationale stated under Alternative 2, the issue in dispute is not unification of rates. The real issue is the fact that the per-minute costs that rural carriers incur are substantially higher than the per-minute costs incurred by the RBOCs, yet the FCC's rate caps were clearly based on RBOC costs. As a result, incentives are created for a CLEC to engage in arbitrage with Track 3 carriers for ISP-bound traffic because rural carriers' higher costs are reflected in higher rates for Section 251(b)(5) traffic. The Rural Alliance also disagrees with the conclusion as stated in Alternative 2 that "the wireless carriers will be the real losers under Alternative 1."¹⁰⁴ To the contrary, rural LECs incur relatively higher costs that are reflected in their rates established pursuant to 47 U.S.C. §252(d). There is no logical policy rationale as to why a wireless carrier should be allowed to pay a capped rate that was calculated

¹⁰⁴ See *Missoula Plan* at 86

based upon the cost structure of the RBOCs simply because another carrier seeks opportunities for regulatory arbitrage in Track 3 service areas.

Meanwhile, the Commission's concern about the superior bargaining power of incumbent LECs is unwarranted within the context of Track 3 ILECs. The Commission's concern was valid within the context of the record that was considered in the *ISP Remand Order* where an RBOC, such as Verizon, is negotiating with a CLEC, such as US LEC, and where the ILEC is close to 200 times larger in terms of revenue than the CLEC.¹⁰⁵ However, this situation is often reversed for Track 3 ILECs, where it is not uncommon for a CLEC or wireless provider to be many hundreds of times the size of the ILEC.¹⁰⁶ Further, some Track 3 carriers have had the burden of proving that their rates for Section 251(b)(5) traffic comply with the pricing standards as set forth in 47 U.S.C. 252(d) in arbitration, and in Federal district and Federal circuit court proceedings. Given that Track 3 carriers must negotiate rates with much larger carriers, and that such rates may be subject to scrutiny in arbitration proceedings and the court appeals process, there is no valid concern that Track 3 carriers possess *any* bargaining power, let alone superior bargaining power. Therefore, the mirroring rule, which was established due to the superior bargaining power of large ILECs, should be eliminated for Track 3 ILECs at the beginning of Step 1 of the Plan.

F. PHANTOM TRAFFIC

The Rural Alliance supports immediate adoption and implementation of the interim Phantom Traffic plan submitted by the Missoula Plan Supporters as well as the long term Phantom traffic solutions in the Missoula Plan. Implementation and enforcement of the

¹⁰⁵ For the year ending December 31, 2005, Verizon reported revenues of approximately \$75 billion and US LEC reported revenues of approximately \$388 million. *See* United States Securities and Exchange Commission, Form 10-K Annual Report, Verizon Communications Inc. and US LEC Corp.

¹⁰⁶ For example, for the year ending December 31, 2005, ALLTEL reported revenues of approximately \$9.5 billion. *See* United States Securities and Exchange Commission Form 8-K, ALLTEL Corporation.

interim plan is not only essential to addressing the growing problem of phantom traffic, but the Rural Alliance also stresses that it is essential to successful implementation of the telephone numbers rule described above. The telephone numbers rule cannot be reasonably deployed if carriers do not receive necessary call detail records in order to identify the originating number and carrier.

Nevertheless, the phantom traffic plan proposed by the Missoula Plan Supporters is an essential first step to resolving a number of long standing phantom traffic issues that have plagued the industry and prevented many rural carriers from being compensated for the use of their networks. In addition, implementation of the Phantom Traffic proposal is key to the implementation of the other interconnection proposals in the plan. The Rural Alliance urges the Commission to adopt and implement immediately the proposed interim phantom traffic solution as filed by the Missoula Plan Supporters.¹⁰⁷ There is little dispute that phantom traffic issues are pervasive.¹⁰⁸ Parties that oppose the phantom traffic plan would have the Commission believe that phantom traffic does not exist, and that rural companies' positions are frivolous in that the rural companies have not supported their claim. Remarkably, Verizon does not acknowledge the validity of the phantom traffic issue, but then proceeds to admit that 20% of its terminating traffic does not have sufficient information for billing the appropriate carrier. Phantom traffic includes all traffic that enters the network of a carrier without

¹⁰⁷ *Ex parte* filed November 6, 2006 by the Missoula Plan Supporters in CC Docket No. 01-92.

¹⁰⁸ See e.g., Rural Independent Competitive Alliance Comments at 1-2; John Staurulakis, Inc. Comments at 2-3; Frontier Communications Comments at 1; Western Telecommunications Alliance Comments at 1; NECA, *et al* at n. 12 & 6 filed in the Phantom Traffic Comment Notice. Oregon Telephone Association and Washington Independent Telephone Association Reply Comments at 4, 'Two Washington companies have seen phantom traffic grow in a few short years from the twenty percent range to nearly fifty percent for one company and approaching sixty percent for the second company.'

sufficient information for the terminating carrier to properly identify and bill the originating carrier.

There can be a variety of reasons that call detail information is not available for any particular call. Phantom traffic, however, is being caused by originating carriers stripping information for the purpose of disguising the jurisdiction of a call. In addition, phantom traffic is caused by inserting pseudo telephone numbers as the calling telephone number in an attempt to disguise the jurisdiction of a call. Actions of this nature are nothing more than fraud and should not be allowed.

It seems to be acceptable to Verizon that approximately 20% of its terminating traffic contains insufficient information for billing purposes.¹⁰⁹ A 20% factor, however, is not acceptable to rural carriers that are billing decreasing amounts of terminating compensation while their terminating minutes of use are increasing. Phantom traffic has become a growing problem that harms both rural carriers and consumers alike.

The interim process proposed by the Missoula Plan Supporters puts in place a first step of a logical process to begin resolution of the phantom traffic problems that have plagued the industry for years. The proposal requires all originating carriers to include industry standard information in call detail records and/or call summary information, establishes industry standards for call signaling, and proposes an enforcement process. Through the adoption and implementation of the proposed requirements, the terminating carriers, as well as the Commission itself, would have a much more accurate and complete record of the amount and origin of terminating traffic that is subject to non-access intercarrier compensation. Adoption of

¹⁰⁹ Verizon Phantom Traffic Comments at 4. “For example, Verizon estimates that approximately 20% of the traffic that either transits over or terminates on Verizon’s network either is missing calling party information entirely or contains plainly invalid calling party data, affecting Verizon’s ability to bill for both termination and transit.”

the interim phantom traffic solution also advances the process for this Commission's approval of a long-term phantom traffic solution that will support and complement the Commission's intercarrier compensation reform recommendation.

As referenced, the Missoula Plan Supporters have put forth a solution that would define and enforce a consistent set of carrier responsibilities. Many parties have recommended remedies to resolve the phantom traffic problem. Some argue that the transiting provider is the party responsible for compensation to the terminating carrier; others argue that terminating carriers should be allowed to block traffic that enters their networks without sufficient carrier identification and billing information. The Rural Alliance does not support a position that would allow blocking of traffic as an appropriate remedy to the problem and cause disruption for consumers. Many of these arguments reflect the frustration level of the rural carriers. The Rural Alliance strongly supports the adoption of the enforcement provisions of the phantom traffic plan filed by the Missoula Plan Supporters as the most reasonable solution: if all carriers are operating under the same set of obligations and the rules are applied consistently and enforced by the Commission, then the rural carriers will have a venue to voice complaints if needed.

The parties that argue against enforcement provisions seem to put forth remedies, such as cooperatively working with the transiting and originating providers, as an appropriate solution. The Rural Alliance submits that without industry standards and enforcement processes, it is difficult for the rural carriers to gain the attention of the carriers that connect indirectly to their networks. Uniform rules and enforcement provisions are an integral part of the phantom traffic proposal.

The rural ILECs have struggled to obtain complete call detail records from the originating carriers and are oftentimes unable to obtain any records at all. Further, the transiting carriers have refused to accept responsibility for the payment of charges related to traffic that is delivered for termination over transiting trunks groups. The result to the RLECs has been increased phantom traffic, loss of compensation, a drain on management and billing resources and frequent billing disputes with the transiting carriers and the originating carriers.

In addition, many rural carriers have invested many hours of time and resources on traffic analyzers and phantom traffic studies in an effort to quantify the amount of traffic that is terminated without sufficient call detail information. The rural carriers also spend growing amounts on consultants and attorneys in efforts to collect compensation due for the use of their networks. Even in situations where the terminating rural carriers have identified billable traffic through traffic studies, they often struggle to collect compensation due to the lack of enforcement mechanisms and the high cost of pursuing billing disputes against the responsible carriers.

Rural carriers are filing an increasing number of complaints at the states after finding resolution through the negotiation process is lengthy and burdensome.¹¹⁰ However, some States, such as Oregon and Washington, view phantom traffic problems as a national problem¹¹¹ and deferred providing direction or enforcement even though the regulatory agency admits that problems exist. The Rural Alliance submits that phantom traffic problems are

¹¹⁰ See e.g. Reply Comments of the Supporters of the Missoula Plan on Their Phantom Traffic Proposal at N. 4; South Dakota Telecommunications Association at N. 2. Oftentimes filings of the nature take many years to resolve.

¹¹¹ See e.g. Oregon Telephone Association and Washington Independent Telephone Association Comments at 5, (“...both the Oregon Public Utility Commission and the Washington Utilities and Transportation Commission determined that they should defer any action on the issue of phantom traffic to allow this Commission the opportunity to adopt a national standard that would apply uniformly to the issue.”); Appendix C: OECA Docket 04-05: Report on Phantom Traffic, September 26, 2005 and Appendix D: WECA Docket 02-01: Report on Phantom Traffic, September 27, 2005.

industry problems that would be better address by the Commission in that industry standards would apply across the Nation, versus individual states having to expend resources with the outcome of numerous proceedings establishing slightly different call signaling rules or call detail information. Without industry standards for call signaling and call detail records in place to force originating and/or transiting carriers to provide adequate billing information, such as those submitted by the Missoula Plan, rural ILECs will be unable to address phantom traffic problems in any satisfactory way.

The Rural Alliance submits it is time for the Commission to end these historic abuses that result in traffic being sent to the network facilities of rural carriers without their knowledge¹¹² and without assurance that sufficient information will be provided to allow billing the financially responsible carrier. Phantom traffic problems need to be addressed and addressing the issues as outlined by the Missoula Supporters is an essential prerequisite to proceeding ahead with intercarrier compensation reform. Moreover, contrary to some parties who claim that phantom traffic rules are unnecessary and onerous, opportunities to benefit from phantom traffic creates loopholes that can be used negate the interconnection rules.

For all of these reasons, the Rural Alliance supports strongly the adoption of the phantom traffic proposal filed by the Missoula Plan Supporters.

¹¹² The phantom traffic proposal filed by the Missoula Plan Supporters at II.G, III.G, and Appendix A contains a notification provision that allows carriers to be notified as new carriers enter the market which provides information regarding indirectly connected carriers.

V. OTHER ISSUES

A. STATE AUTHORITY OVER INTRASTATE ACCESS CHARGES SHOULD NOT BE PREEMPTED

The Plan appropriately calls for a cooperative effort between the states and the FCC in transitioning Track 3 carriers' current disparate intercarrier compensation rates to the uniform cost-based rates proposed in the Plan. The Plan does not preempt state authority over Track 3 carriers' intrastate rates. This approach is not only prudent, but also the most expeditious approach for accomplishing the necessary reform of the current system.

The Plan provides incentives for states to cooperate with the FCC in implementing the proposed intercarrier compensation reform at Step 1 by making RM and Early Adopter Mechanism funding available to those states that implement all aspects of the Plan. Consumers in a state that implements the Plan will enjoy lower intrastate charges, and the only increases those consumers will see is a higher Federal Subscriber Line Charge *only* then if the current local rate is below the rate benchmarks. The Rural Alliance believes that these incentives, along with the overall benefits of the Plan, will likely lead most states to adopt the Plan's terms.

The Plan proposes that in the rulemaking conducted at Step 4, the Commission should evaluate the success of the cooperative approach and should consider what further measures, if any, are needed to reform intercarrier compensation, including measures to implement all Plan rates for Track 3 carriers.

B. ALASKA ISSUES

1. Access Rates

Section II.B.3.a of the Plan sets forth two alternatives regarding switched access rates charged by the rural Alaska LEC Track 3 carriers. Under the alternative proposed by the Rural Alliance, the rates for Alaska Track 3 carriers will match other Track 3 carriers. Some parties,

however, have alternatively proposed that beginning at Step 4, rates for terminating switched access charges in Alaska (both intrastate and interstate) would be reduced further and the resulting reduction in access revenues would be offset by increases to the RM. The result is both inequitable and inconsistent with established Commission policies with respect to interconnection to rural LEC networks in Alaska.

This result is sought primarily by GCI, an Alaska-based competitive carrier. GCI's position is that Track 3 LECs in Alaska should reduce both interstate and intrastate access rates to .01 per minute. GCI essentially seeks special benefits and financial gain at the expense of the public interest. The average current access rates charged by rural Alaska LECs are .0205 for interstate access and .07 for intrastate access. The rationale of parties seeking further rate reductions at step 4 of the Plan is that the traffic mix between Track 3 and Track 1 carriers in Alaska is proportionally higher than the mix at the national level. The rationale, however, is not factually sound.

For example, AT&T is not a regional carrier, and it clearly has the ability to average its costs on a national basis. Moreover, under the Commission's existing rules and policies, there is recognition that costs may vary geographically and that AT&T and other carriers have the responsibility to establish their rates on a geographically averaged basis, thereby accounting for the fact that costs are not the same in all areas.

Interconnecting carriers have no factual basis for requiring further reductions in the access rates charged by Alaska's Track 3 Carriers at step 4 of the Plan.

Even though GCI is not a national carrier like AT&T, GCI has no need for favored treatment. GCI's current toll bundle offering has retail rates at .02 for interstate service and .10 for intrastate service. These competitive rate levels reflect the fact that the current traffic mix in

Alaska enables GCI to sell retail toll well below the current Track 3 LEC access rates. Reducing the intrastate access rates of the rural Alaska LECs to a level equivalent to the interstate rate of .0205 will unquestionably reduce GCI's access costs significantly. With intrastate access rates equal to today's interstate rates, GCI and other Alaska carriers will easily be able to offer bundles of toll service (both interstate and intrastate) at the .02 per minute rate that GCI today charges for interstate. The only possible reason to impose further rate reductions on the Alaska Track 3 LECs access rates to levels below a cost basis is to serve the interests of a very few carriers. The interests of those carriers will already have been well served by the initial access rate reductions provided in the Plan .

The fact that the Plan would provide the rural Alaska Track 3 LECs with an offset to the additional access revenue loss through the RM is not a sufficient basis to offset the public interest concerns that result. The RM should not be used to support or subsidize the profit margins of a few interconnecting interexchange companies by providing them with a below cost rate. Accordingly, the Rural Alliance respectfully asks the Commission to reject the alternative set forth by some Plan Supporters which would unjustifiably impose further access rate reductions on the rural Alaska Track 3 LECs at Step 4 of the Plan.

2. Tandems

Section III.B.2.f. of the Plan sets forth two alternative treatments of tandems and the Edge in Alaska. The Rural Alliance respectfully asks the Commission to adopt Alternative 2 in order to ensure that there is no limitation imposed on Alaska's rural LECs to deploy network facilities, including tandems, in the most efficient manner that will serve the public interest. Alternative 2 provides that protection by ensuring that a rural LEC has the right to deploy or use

a LEC-owned tandem; alternative 1 purposefully does not include that specific right which all LECs have today.

GCI and AT&T, proponents of Alternative 1 and the exclusion of a LEC's right to deploy its own tandem, argue that all Alaska LECs should be locked permanently into the current network configuration, regardless of technological improvement, innovation, or the ability to consolidate facilities to cut costs to the consuming public. This is based on the unfounded assumption that the LEC's installation of additional new transport facilities and the use of tandem switching will somehow destroy the efficiency of the network. This claim is devoid of common sense, counter intuitive, and plainly anticompetitive.

Many rural Alaska LECs are currently dependent on connection to inefficient tandem facilities of other carriers. The rural areas (the bush) of Alaska are the most striking example of this reality. In many communities, 30-years old technology and multiple facilities provide service to fewer than 100 subscribers. Limited bandwidth availability is frequently coupled with transport costs that are remarkably higher (ten to 12 times) than the cost in the lower 48 states. Often, this limited bandwidth is tied up in dedicated circuits, which limits severely its utility. The reality of how the existing interconnected Alaska network is operated cannot be referred to as "efficient." While other parties may attempt to argue to the contrary of this conclusion that is self-evident to many rural Alaska LECs, no party should be able to argue against the opportunity for rural Alaska LECs to deploy their own tandem facilities and thereby improve efficiencies and services. Claims that LEC actions to deploy new tandem facilities will destroy any existing so-called "efficiencies" are arguments with no foundation in reality to which rural Alaska consumers can attest.

Contrary to appearances, competition has not brought network efficiencies to Alaska. In Alaska, AT&T is still deemed to be the carrier of last resort because GCI, even a full decade after receiving authorization to serve statewide, has not constructed facilities to serve every community. AT&T has repeatedly asked both the APUC and the RCA for AUSF support for continuing to serve the many communities unserved by GCI. Yet, both GCI and AT&T want to maintain separate facilities from themselves and the LECs, with separate work-forces for each. Their desired operational design will only compound the problems found in the existing realities that are from “efficient.”

The potential deployment of new host/remotes, equal access tandems, and IP based transport links between and among carriers in Alaska holds promise as a solution to foster the availability of bandwidth necessary to enable for the provision of broadband services in Alaska’s remote communities. In order to ensure that the Track 3 rural LEC in Alaska have the opportunity to fulfill this promise, the Rural Alliance respectfully asks the Commission to reject the alternative proposed in Section III.B.2.f. of the Plan that would limit the rights of rural Alaska LECs to deploy their own tandem facilities.

C. THE FEDERAL BENCHMARK MECHANISM PROPOSAL

On January 30, 2007, the Missoula Group along with five state commissions filed with this Commission a proposal for a “Federal Benchmark Mechanism” to be incorporated into the Missoula Plan’s intercarrier compensation reform proposal.¹¹³ The Missoula Plan originally filed in July of 2006 proposed an Early Adopter Fund of at least \$200 million to help achieve equity under the Plan between states that have taken steps to address intrastate access reform and states that have not. The Missoula Plan Supporters also stated in the filing their commitment to

¹¹³ See letter to Marlene Dortch dated January 30, 2007. The state commissions signing the letter along with the Missoula Plan Supporters were Indiana, Maine, Nebraska, Vermont and Wyoming ...

work with state commissioners to determine how the mechanism should work and to estimate the revenues that will be required for that mechanism.

The Federal Benchmark Mechanism proposal is the result of that collaborative work effort that has been underway for several months. It is called the Federal Benchmark Mechanism because it relies on a national residential rate benchmark to establish comparability among states. As stated in the January 31, 2007, filing, the working group followed three guiding principles while developing a proposed solution that recognizes the disparate starting points among states:

1. Create a fair and balanced approach among states.
2. Manage the political feasibility of establishing a new federal mechanism that provides for access recovery at a National level.
3. Address concerns of a multitude of states, not just a handful

Representatives of the Rural Alliance participated actively with the working group, and believe that the Federal Benchmark Mechanism represents a significant improvement in the Plan and that it effectively achieves the goals of ensuring equity among the states. The Commission should incorporate the Federal Benchmark Mechanism in the plan that it approves for intercarrier compensation reform.

VI. CONCLUSION

For the reasons cited above, the Rural Alliance respectfully requests the Commission to act expeditiously to implement the Missoula Plan in its entirety. The current intercarrier compensation regime is now not meeting the goals it was intended to fulfill, and without immediate attention consumers, and most particularly rural consumers, will be harmed. The Plan is comprehensive, and the result of two years of intense collaborative effort under the auspices of the NARUC Intercarrier Compensation Task Force. It represents the best solution to many intercarrier compensation and interconnection issues that could be negotiated by a diverse cross-

section of telecommunications industry participants. It is the only comprehensive proposal on the table. While it is understandable that parties that currently benefit from anomalies in the current intercarrier compensation regime oppose certain aspects of the Plan, it is the responsibility of the Commission to enact meaningful reform that will benefit consumers and encourage the productive evolution of telecommunications services and markets. The remedy and certainty that will result from implementing the Missoula Plan will accomplish these goals and will provide rural carriers with both the ability and incentive to continue investments in rural telecommunications infrastructure that will result in wider availability of broadband services to rural consumers.

Respectfully Submitted,

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